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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 16

SAMUEL R. TOUCEY,

Petitioner,

vs.

NEW YORK LIFE INSURANCE COMPANY,
A CORPORATION.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR PETITIONER ON REARGUMENT.

SAMUEL R. TOUCEY,
Pro se.

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BRIEF IN ARGUMENT BEFORE THE SUPREME COURT OF THE UNITED STATES.

To the Honorable, the Chief Justice, and Associate Justices of the Supreme Court of the United States:

Comes now your petitioner, and if so permitted, states.

In above cause Supreme Court of the United States entered order by an equally divided court April 7th, 1941; motion for rehearing filed with Supreme Court April 14th, 1941, rehearing motion granted by Court April 28th, 1941, and case set for argument October 13th, 1941.

Said motion for rehearing by petitioner thus granted by the Court (filed April 14th, 1941) set out arguments in order herein named) (1) Why did the State of Missouri adopt Missouri State Established Law legally interpreting the insurance policy disability clause; (2) pointing out to

the Supreme Court of the United States how *Federal trial court's decision and Federal court's written opinions in entering temporary injunction, permanent injunction, court's final decree was contrary to Missouri State Established Law*; and (3) pointing to United States Supreme Court governing laws when the Federal court, with petition in equity before it charging defendant fraud, year 1934, when the Federal court passed on issue of fraud, Federal court lost jurisdiction to pass on issue of policy disability.

Your petitioner here respectfully prays the Honorable Supreme Court of the United States will now accept petitioner's final brief in argument, and unless the defendant file his Opposition Brief and your petitioner deems it necessary to make further argument, this will conclude petitioner's arguments.

In the order named on page one, paragraph three:

The Controlling Laws of the State of Missouri Commonly Termed Missouri State Established Law to Govern Legal Interpretation of Insurance Policy Disability Clause.

Within the State of Missouri, and for more than the life time of one generation, Missouri State courts were in open conflict on the legal interpretation of insurance policy clause. Public charges were made Missouri courts had become contaminated by *insurance corruption.* By the power of the Missouri citizens *vote,* judges appeared on the bench of Missouri State courts and finally gave the uniform answer, the *Controlling Law of Missouri—Missouri State Established Law,* thus legally and uniformly interpreting the insurance policy disability clause. This drove out of Missouri State courts such insurance corporations who *sold their wares* to Missouri citizens with so-called *ambiguous* insurance policy clauses in their policies; *and among such Insurance Corporations was this defendant thus driven out*

of Missouri courts, and for the said reason stated, with its form policy identically the same, with the ambiguous disability clause set out in policy identically the same as set out in defendant policy No. 8,611,895, developing a legal imbroglio now before the United States Supreme Court to decide and render justice. Missouri courts had rid themselves of such legal imbroglios on the issue of policy disability clause, and the record held within Missouri courts is ample proof why this defendant itself elected to transfer all this legal conflict and confusion from Missouri State court over into Federal court; and with this defendant *one hope* which your petitioner hopes to amply point to before concluding this argument.

Suit in Equity was filed in Missouri State court, October, 1935, charging fraud, year 1934, by defendant in reducing policy Number 8,611,895 from its original amount of fifty thousand dollars ($50.000.00) to twenty-five thousand dollars ($25,000.00) asking reinstatement of policy to original amount. The origin, the life of the Suit in Equity was fraud. Had the Federal court ruled fraud did occur in Equity Suit, as charged, then the court would determine if petitioner was permanently and totally disabled, waiver of premium under disability policy clause, what, if any, provision in policy contract which conditioned petitioner to notify this defendant *Home Office of his disability*, and did petitioner observe such condition if set out in policy, etc. This defendant transferred said Suit in Equity, charging fraud, from Missouri State court over into Federal court and Equity Suit went to trial November, 1936.

Before Federal court, your petitioner's controlling case was *Mutual Life Insurance Company of New York, Petitioner* vs. *Johnson*, 293, U. S. 335, 340, decision rendered by the United States Supreme Court, argued November 15th, 1934, decided December 3d, 1934, Mr. Justice Cardozo delivered opinion of Court. Federal trial court entered its

written opinion on said United States Supreme Court law which will be quoted in full, and in its proper place, below.

The Federal court rendered its decision at close of trial (November 23d, 1936) and by said decision *disagreed* with *Missouri State Established Law On Insurance Policy Disability Clause As Set Out In Defendant Policy No. 8,611,895 contrary* to well established *Constitutional law* governing the adjudication of a suit in equity charging fraud, decision ruling there was *no defendant fraud* as petition in suit of equity charged.

Thusly the Federal court received into the Federal judiciary with wide open arms, in conflict with Missouri State Established Law on insurance policy disability clause; and harbored before the Federal judiciary Bar of Justice what the State of Missouri judges, and by their Missouri court rendered decisions, had driven out of the State of Missouri, generations of State court division and legal conflict. The "gold mine" for dishonest insurance in Missouri had been the *ambiguous* insurance policy disability clause and its consequent legal imbroglios. Your petitioner appreciates why dishonest insurance would want to retain it, and in Missouri, and be protected by law in so doing, but believed it to be a plain citizens duty thus caught within the wringer of the Federal judiciary legal rollers to fight the issue to the bitter end, not for your petitioner's own benefit as it may be he is beyond such benefit, but for the benefit of his family and for the benefit of the some three millions of insurance policy holders in Missouri. This Honorable Supreme Court of the United States can best judge how petitioner's legal fight and effort, without legal mind, without previous legal experience or contact has been carried, fairly or unfairly, and also without a previous court experience in any court of the land in a period of more than three score and ten.

In corroboration of the legal Missouri Court decisions in support of the foregoing perhaps it will be more than sufficient here to but quote decision rendered by the Court of Appeals of Missouri in year 1905; and also decision rendered by the Supreme Court of Missouri, Division Number 1, in year 1937, (a span of thirty-two years) both on the issue of the insurance policy DISABILITY clause and both in support of a correct and fair legal interpretation of the insurance policy disability clause—Missouri State Established law. It is deemed unnecessary to mention or quote conflicting or opposing Missouri Court decisions in opposition to such Missouri Court decisions and conclusions as set out in said 1905 and 1937 Missouri Court decisions.

1905 (113 Mo. app. 622).

James v. United States Casualty Co. Kansas City Court of Appeals, S. W. Reporter, Mo., decisions only, 87 and 88, page 125. *June 5th, 1905.*

1) Appeal—theory of trial. Appeal from Circuit Court, Jackson County.

2) Accident insurance. Risks insured.

Insured was a Queensware Merchant, "the policy should be regarded as insuring against inability to substantially perform the general occupation of Queensware Merchant, and not merely against inability to perform office and traveling. Insured injured by fall from street car and suffered partial injury.

3) A provision in an accident policy that it insured against "total" inability to perform "any part of the duties" of insured, who was a merchant, cannot be construed literally, but means inability to perform any substantial part of the business.

Quote from decision in excerpt:

It cannot be that the *parties intended* that before an *insured could recover on the policy he should lie the full*

period of his injury in a state of coma. To interpret the clause in its contractual sense, as defendant seeks to have us do, would render the contract utterly useless to an insured, and would be nothing short, practically speaking, of collecting a premium without rendering a consideration. We, therefore, find ourselves, driven back to the position taken by the authorities on the construction of the first part of the clause, viz: that the disability meant is a disability as to the performance of any substantial part of the business.

Judgment Affirmed. All concur.

Heald v. *Aetna Life Insurance Company, Hartford, Conn.*, S. W. Rep. 104-105, S. W. (2d) Missouri Cases, page 379.

No. 34830.

SUPREME COURT OF MISSOURI, DIVISION NUMBER 1.

March 17th, 1937.

Rehearing denied April 21, 1937.

1) Appeal and error—*861.

Where Court of Appeals certified decision to Supreme Court on ground that it was in conflict with decisions of another Court of Appeals, cause was in Supreme Court for hearing and determination in like manner as in case of jurisdiction obtained by ordinary appellate process, but Supreme Court was at liberty to avail itself of such portions of certified opinion as it might choose (Const. Amend. 1884, *6).

2) Insurance—146(1).

Insurance policy must be enforced as written where language is plain and unequivocal, but where language is *AMBIGUOUS*, its meaning is to be determined by judicial construction.

3) Insurance—146(3).

Construction of insurance contract *most favorable to insured* must be adopted where contract is *AMBIGUOUS.*

4) Insurance—524.

Provision in accident policy that *total disability benefits* could be *recovered* only if *injury prevented insured from performing "any and every duty" pertaining to his occupation, with respect of the phrase "any and every" was invalid, and the provision containing it must be construed so as to make the provision effective.*

5) Insurance—516-524.

"TOTAL DISABILITY" contemplated by an accident policy, *OR THE DISABILITY CLAUSE OF LIFE POLICY*, does not mean, as its literal interpretation would require, a state of absolute helplessness, but means inability to do all the substantial and material acts necessary to the prosecution of the insured's, or, in many instances, *any*, business or occupation, in the customary and usual manner.

11) Insurance—668(11).

In action on accident policy, whether insured, who was a butcher with duties which consisted of waiting on customers, cutting meat, and buying meat from packing houses, was totally disabled by *loss of thumb* and resultant painful conditions of hand held for jury, where insured was unable to properly perform predominant duty of meat cutting.

In an action by jury plaintiff had a verdict and judgment of $525. The defendant appealed to the Kansas City Court of Appeals. That court certified its decision to this court pursuant to article 6, section 6, Amendment of 1884 of the Constitution of the state, on the ground that such decision was in conflict with decisions of the St. Louis and Springfield Courts of Appeals.

Quote in excerpt from decision, page 382 (2-5).

"Such is the rule, but to that rule there is an equally well settled exception, viz: If the language is *ambiguous*, i.e., open to different interpretations, its meaning is to be interpreted (determined) by judicial construction, *and in insurance contracts the construction most favorable to the insured must be adopted.* State ex rel., Security Ins. Co., Allen et al., 305 Mo. 607, loc. cit., 614, 267 S. W. 379, 381. The rule prevailing in this state and in most other jurisdictions is to the effect that a provision such as the one before us, with respect of the phrase "any and every duty" "*would render the contract utterly useless to an assured and would be nothing short, practically speaking, of collecting a premium without rendering a consideration insofar as the total disability clause is concerned.*"

Numerous court decisions quoted as to index in the above rendered Supreme Court of Missouri decision, notably the

Rickey v. *New York Life Insurance Corporation*, No. 22787, S. W. Reporter, 2d series, # 71. page 88. *Court of Appeals, Missouri, May 8th, 1934.*

The judgment of the Circuit Court is affirmed.

All concur.

Your petitioner quotes in the foregoing the 1905 and 1937 Missouri State Court decisions rendered on the issue of the insurance policy disability clause in proof that the insurance policy disability clause, in Missouri, for more than the lifetime of one generation, was a "*GOLD MINE*" for dishonest insurance.

Petitioner in motion for rehearing granted by the Supreme Court of the United States filed April 17th, 1941, page four, quotes the *Rickey* v. *New York Life Insurance Corporation*, No. 22787, decision rendered by Court of Appeals, Missouri May 8th, 1934. It was in support of petitioner's contention that so long as dishonest insurance, under the

cloak of the insurance policy disability clause, can influence the LAW, be it state or nation, to support their contention their own concocted AMBIGUOUS insurance policy disability clauses are to be legally construed by court decision as *NOT AMBIGUOUS*, just so long will the public, and in both state and nation, be so exploited as in the case of your petitioner in the above entitled cause.

It is a significant fact, and your petitioner particularly calls this Honorable Supreme Court of the United States' attention thereto, both the 1905 and 1937 Missouri rendered decisions above use practically the same identical phraseology *"would render the contract utterly useless to an insured and would be nothing short, practically speaking, of collecting a premium without rendering A CONSIDERATION INSOFAR AS THE TOTAL DISABILITY CLAUSE IS CONCERNED.*

In the foregoing petitioner's final brief in argument on rehearing granted by Supreme Court of the United States, as set out on page one, paragraph three, in order named, first effort would be to show the controlling law of Missouri governing the AMBIGUOUS insurance policy disability clause, and out of said legal interpretation by Missouri Courts was born what is here known as the Missouri Established Law. With petitioner's necessity to yet mention herein argument against the Federal court decision, written opinions, injunctions, court's final decree as contrary to not only the controlling LAW of Missouri, but all contrary to United States Supreme Court LAWS themselves, will not pause longer dealing with Missouri controlling LAWS, but go on to the next. Before leaving the argument on the JUSTICE under *Missouri controlling LAW* on the *legal interpretation* of the *insurance policy clause*, fair to both policy holders and their insurance corporations, desire to point out to the Honorable Supreme Court of the United States this fact:

In the *Rickey* v. *New York Life* case, Number 22787, S. W. Reporter, 2d series # 71, page # 88, decision rendered by the Court of Appeals, Missouri, *May 8th, 1934,* (as quoted in excerpt by petitioner in motion for rehearing filed with Supreme Court of the United States by petitioner April 17th, 1941, page 4) said *Rickey* v. *New York Life* case was before the Supreme Court of Missouri cited as precedent case and mentioned by the Missouri Supreme Court in decision rendered as quoted in excerpt, page FIVE of foregoing brief.

This *defendant policy Number 8 611 895* sold to your petitioner in *1924, evidence before the Federal court in trial, and specifically referred to by rendered Federal court decision* November 23d, 1936, is the *same identical form defendant policy with the same identical disability clause contained therein as involved in the Rickey vs. New York Life case*, number 22787, *decision rendered thereon by Court of Appeals, Missouri,* May 8th, 1934, the controlling Missouri LAW previous thereto and since. Here the Missouri Court said—"In determining whether trial court should have sustained defendant's demurrer to evidence, Plaintiff's evidence must be deemed true, defendant's contradictory evidence must be disregarded, and plaintiff must be given benefit of all reasonable and favorable inferences arising from evidence". And the Missouri Court, in same decision, also said—quote

> "Having in mind the foregoing rules, can it be said that plaintiff, by his extraordinary efforts to make a living for himself and family, thereby furnishing evidence which, as a matter of LAW, will defeat his claim for disability benefits?".

In the decision rendered by the Supreme Court of Missouri, quoted in excerpt, page Five foregoing brief in argument, in the precise language contained in this Missouri

Supreme Court's decision on the *ambiguous* insurance policy clause appears quoted starting with last paragraph, continued on page Six of brief.

The controlling Laws of Missouri definitely and legally determined, and by court decision, what the insurance policy disability *ambiguous* clause was, and the Court of Appeals in Missouri in the Rickey vs. New York Life case number 22787, decision rendered May 8th, 1934, thus spoke plainly the controlling Law of Missouri governing legally in Missouri on May 8th, 1934, before and since.

Missouri Courts thus, and by rendered court decisions, legally declare the disability clause in this defendant's policy Number 8,611,895, sold to your petitioner by defendant in 1924 to be *ambiguous;* but the federal trial court, first by its rendered federal court decision November 23d, 1936, claims it to be the Law the disability clause in petitioner's defendant policy Number 8,611,895 is *not ambiguous;* and the same federal trial court and by its written opinion on December 3d, 1936, having before *federal court* the *controlling Supreme Court of the United States decision* (Mutual Life Insurance Company of New York vs. Johnson, 293, U. S. 335, 340) Supreme Court decision written by Mr. Justice Cardozo, December 3d, 1934, here the federal court written opinion claims the Supreme Court of the United States controlling case does not apply, analyzing the Supreme Court of the United States control case before it, and here thus cited, that the policy clause on disability in policy issued by this defendant to petitioner Number 8,611,895 in above entitled cause *not to be ambiguous*, setting out to prove in such written opinion by making a comparison—quote "The cat is black, we would not think it was *ambiguous* and of doubtful meaning even if five hundred men declared that what really was meant is—The Cat is White".

As to whether the *Disability Clause* in the insurance policy was *Ambiguous* and subject to a controversy where the courts of the country were arrayed in opposing groups, while this perhaps was true in the era of "dark ages" in Missouri (also Virginia and other states) by the year 1936 the "*Liberals*" won, and for a period of years before 1936 in Missouri, also Virginia, as the *Controlling Law* in Missouri and in Virginia declared the *Disability Clause* in insurance policy was *Ambiguous.*

The *Controlling* decision by the United States Supreme Court was—Mutual Life Insurance Campany of New York v. Johnson, 293 U. S. 335, 340—rendered December 3rd., 1934, and fully supported the *Controlling Law* of Missouri existing for long years previous thereto, and also as well the *Controlling Law* of Virginia. It had its beginning in Virginia.

A Federal court for the Western District of Virginia rendered decision in favor of defendant insurance and declared the *Law To Be* the insurance policy clause was *Not Ambiguous.* On appeal by petitioner the Circuit Court of Appeals Fourth Circuit over-ruled Federal court, reversed the judgment and remanded the case for re-trial. On appeal by defendant insurance the Supreme Court of the United States rendered decision and affirmed decision by Circuit Court of Appeals.

The Federal court for the Western District of Missouri, and with this defendant, together with its issued policy Number 8,611,895 before Federal court as evidence, also before the same Federal court the *Controlling Law* of Missouri, together with the *Controlling Law* by decision rendered by the United States Supreme Court coming out of Virginia, as above, rendered Federal court decision November 23rd., 1936, declaring it to be defendant disability policy clause in policy No. 8,611,895 was *Not Ambiguous,* and on December 3rd., 1936, the same Federal court wrote

its opinion analyzing United States Supreme Court decision written by Mr. Justice Cardozo, as above, and ruled said decision did not apply in above entitled cause.

The Federal court thus disagreed by decision with the Missouri State established Law on the insurance policy disability clause, in fact ignored the *Controlling Law* governing in Missouri. *Exactly what a Federal court ruled in Virginia*, but before the Federal court for the Western District of Missouri was defendant policy No. 8,611,895 in above cause which same form policy, *with the same identical disability clause*, had been before Missouri courts over a long period of years, in fact Missouri court juries had declared its disability policy clause to be *Ambiguous* let alone a continuous stream of Missouri court decisions in the same litigagation before Missouri courts many, many years (*Rickey* v. *New York Life Insurance Corporation*, Number 22787, S. W. Reporter, 2d series #71, page #88, decision rendered Missouri Court of Appeals May 8th, 1934). It does not matter, nor can it now be an issue, what consideration the *Controlling Laws of Missouri* received before Federal court trial, decision rendered November 23rd., 1936. The written opinion entered by Federal court December 3rd., 1936, clearly states Federal court was not bound to follow the Missouri Law. Of course, the Federal court did not, nor the *Virginia Controlling Law*, nor was the Federal court bound to do so; but with the United States Supreme Court *Controlling Law*, the subject of Federals court's analysis in written opinion December 3rd., 1936, surely this decision, in *Declaring* the Supreme Court of the United States—*"We Yield to the Judges of Virginia Expounding a Virginia Policy and Adjudging its Effect"*, it would seem if the Supreme Court of the United States was big enough to recognize the *Justice* to the State citizen by observing the *Controlling State Law*, the Federal court for the Western District of Missouri should have been big enough also as

a Federal court in Virginia refused, by decision, to observe the Virginia *Controlling Law*, but there both the Circuit Court of Appeals Fourth Circuit and the United States Supreme Court did not agree, by decision, with said Federal court. If not in Virginia, why not Missouri.

Federal court rendered decision November 23rd., 1936, and Federal court written opinion December 3rd., 1936, is fully analyzed below by your petitioner, opinion quoted in full on pages 37-40 below.

Decision rendered by the United States Supreme Court as referred to above quoted on pages 53-55 below.

On the insurance *Disability* policy clause in policy No. 8,611,895 in the above entitled cause said Federal court's decision and written opinion (year 1936) can only mean it to be the Law of the United States the policy disability clause is *Not Ambiguous*, exceedingly *"Fair"* to policy holder who, *if ever injured or disabled must remain in a state of coma, on a bed if he has one before the insurance company pay disability benefits as setout in policy.* The fact policy holder (as in the case of your petitioner here) paid this defendant well over *Fifty Thousand Dollars Cash*, never received one penny back, was charged by defendant with *"Unclean Hands"* before the Federal court trial and perhaps because defendant was brought into a Missouri State Court to determine why this defendant collected this sum over *Fifty Thousand Dollars*, to explain to court and Jury "What For", this defendant transfers your petitioner from Missouri State Court over into Federal court, tried without jury, and what the Federal court believed to be the Law under the Constitution of the United States appears set out in Federal court's decision rendered November 23rd., 1936, and written opinion December 3rd., 1936, latter quoted below pages 37-40 declaring policy clause on disability was *Not Ambiguous* and under

the Law this was it, provisions covered by decision rendered.

Your petitioner's best reply to it all is the 1905 Missouri court's decision set out on page five in foregoing argument; and also the 1937 Missouri Supreme Court's decision set-out on page five of foregoing argument. Here, spanning a period of Thirty Two Years between decisions rendered both Missouri courts, on the *Ambiguous* insurance *Disability Policy Clause* said— *"to interpret the clause in the contractural sense, as the defendant seeks to have us do, would render the contract utterly useless to the insured, and would be nothing short, practically speaking, of collecting a premium without rendering a consideration"*. In substantially the same precise language the 1905 and 1937 Missouri Courts spoke. The United States Supreme Court said—*"Yield to the Judges of Missouri in Expounding a Missouri Policy and Adjudging its Effect"*, as while here your petitioner transposes the phraseology (injecting Missouri instead of Virginia) this is what the Supreme Court of the United States meant.

The above entitled cause had its beginning in Missouri, October, 1935, when petition for suit in equity, charging *Fraud* was filed. Your petitioner charged on page three of foregoing, last paragraph, the Federal judiciary, as a result, received with *"Wide Open Arms"* what was publicly charged in Missouri as *Insurance Corruption* contaminating Missouri courts before Missouri courts gave the answer by court decision, *Missouri State Established Law*. Thusly was why your petitioner was transferred by this defendant from Missouri State to Federal court for trial. There is no need to submit proof a Federal judiciary three-judge Federal court in Missouri, deceived, of course, harbored *Corrupt And Dishonest Insurance* and favored the same by the rendered decision under which thousands of Missouri policy holders were *DEFRAUDED out of from ten to twelve*

millions of dollars of policy holders money. Missouri courts had protected them, the Federal judiciary of Missouri failed to do so. All this since 1935 from the press, not only of Missouri but of the nation which seems proof. As recent as February 10th, 1941, a Missouri court of Jackson County, Missouri, has rendered decision an association identified as the Employers Liability Association (initiated by insurance and this defendant's department head of Kansas City a charter subscriber to said association) had so influenced the citizens of Jackson County Missouri a citizen could not obtain a fair jury trial in Jackson County Missouri courts and, by court decision, decreed change of venue could be had so trial could occur in some other county. Under said Missouri court decision the *CORRUPT GROUP* back of the initiation of said association have been busy endeavoring to influence the Supreme Court of Missouri to over-rule the Jackson County Missouri Court's decision. There is only one way *CORRUPT and DISHONEST INSURANCE EXPLOITING THE PUBLIC CAN BE STOPPED, THE LAW, and this defendant in the above entitled cause your petitioner has, and here again charges to be CORRUPT.* The Jackson County Missouri Court decision rendered February 10th, 1941, was mentioned in petitioner's motion for rehearing, pages 14 and 15, filed April 17th, 1941. Also set out in advance form (and before any official support) on pages ≠ 49-50 petition for writ of certiorari, NUMBER 587, filed NOVEMBER 9th, 1941.

In 1935-1936 it is clear this defendant hoped to stage a Federal judiciary "old-time" Missouri circus with its old Missouri antiquated legal imbroglios finally thrown out of Missouri courts with the adoption of *Missouri State Established LAW.* After repeatedly trying to convince Missouri courts to "junk" Missouri method to protect insurance policy holders, *FAILED*, this defendant transfers

your petitioner in 1935-1936 from Missouri State to Federal court with its retinue of expert and high-priced legal talent, its whole paraphernalia of legal briefs, to convince courts and juries what the Constitution does not intend where it can, and so far has succeeded before the Federal judiciary of Missouri, having utterly failed in years of effort in Missouri and before Missouri Courts.

This is the influence unquestionably back of a group of senators (Republicans and some Democrats) who, in 1937 defeated the President's Federal Judiciary Court Revision Bill. The outraged class in the State (Missouri for one) finally trimmed their sails so they took on the Federal judiciary for the insurance policy holders *JUSTICE*. Two professional lifetime politicians, directors on this defendant's board, paraded the country against the court bill, one a Republican, one a Democrat with life-time diametrically opposite political philosophies. *It takes power to deliver such for public propaganda.*

Today the leadership in this United States Senate group against the court bill back in 1937, comprise the leadership of Senate isolationists justifying Secretary Knox of the Navy to declare to the American Legion convention, on the issue of who fired the first shot—"The important fact for the American people to digest was—*The America First Committee was telling the American public that, in its judgment, more likely the German U-boat commander was telling the TRUTH than the American Naval Officer who commanded the Greer*". This same Senate group of leadership won on the 1937 court bill and this defendant went all the way to *SUPPORT THEM*. Page #47, first paragraph, petition for writ of certiorari, Number 587.) If LAW fails American Democracy would be destroyed from within. Commencing with 1939 America developed a group who would rather defeat Roosevelt than defeat Hitler and the 1937 group of senators lead in 1939, too.

2c

IN THE ORDER NAMED ON PAGE ONE THIS BRIEF, PARAGRAPH 3.

Federal court decision, November 23rd, 1936:

> Federal court entered injunctions, court's final decree ordering Marshall to destroy defendant policy Number 8 611 895, stopping proceedings in Missouri State court.
>
> Circuit Court of Appeals decision affirming Federal court judgment.

This defendant has claimed, throughout the entire Transcript of Record, petitions, Opposition Briefs, Briefs in argument, and at all times and all places that at "any time" did the defendant advise your petitioner what the terms of policy Number 8 611 895 set out, nor was defendant ever so requested by petitioner, anyone representing petitioner; and, of course, if so requested would have refused to answer. This is the claim made by this defendant through the entire life of your petitioner's suit in Equity charging FRAUD.

Federal court decision rendered November 23d, 1936, quote in excerpt:

> "Now, having thus declared the law, I decide an issue of fact, which may be described in the record as the court's finding of Fact No. 1. *I find the fact to be that the defendant did not in any manner or by any means conceal from the plaintiff that the $50,000.00* contract or policy of insurance did contain a provision for indemnity against total and permanent disability; on the contrary, the defendant advised the plaintiff that it contained such a provision."

Policy No. 8 611 895 was evidence before Federal court; and Federal court also admitted to evidence as component part of policy New York Life letter signed, written and addressed to petitioner dated January 9th, 1924, received by petitioner and answered January 12th, 1924, reply addressed

to sender, the New York Life Branch Office, Kansas City, Missouri.

This defendant letter to petitioner dated January 9th, 1924 (as set out in petition for writ of certiorari, Number 587, page #23, last paragraph, continued through pages 24-25), advised petitioner policy No. 8 611 895 had been issued, effective *January 2nd, 1924, terms LIFE & ACCIDENT*, double indemnity, premium $2182.00 for 12 months—1924, urging petitioner to buy policy.

The *terms* of policy No. 8 611 895 proved to be terms of *LIFE, HEALTH and ACCIDENT* as was *proven* by *policy* in *evidence* before *Federal court*, also *defendant letter with contrary advice dated January 9th, 1924. EVIDENCE BEFORE FEDERAL COURT WITH POLICY No. 8 611 895* advised *policy terms LIFE & ACCIDENT.*

Your petitioner initiated petition for suit in Equity charging defendant FRAUD, June, 1934, because defendant on June 29th, 1934, advised petitioner terms of policy No. 8 611 895 only to be *LIFE and ACCIDENT, that policy provided no HEALTH* provision. Hence defendant June, 1934, advice to petitioner conformed to defendant letter to petitioner dated January 9th, 1924, evidence with policy before Federal court.

Defendant denied any June, 1934, contact with petitioner in testifying before Federal court, in Transcript of Record in above cause, in all defendant petitions, briefs, etc.

Petitioner and his secretary was only one advising Federal court these facts, defendant denied same.

Federal Court decision above quoted in excerpt in error—*"ON THE CONTRARY, THE DEFENDANT ADVISED THE PLAINTIFF THAT IT CONTAINED SUCH A PROVISION"*.

This defendant *denied before Federal court, denied in Transcript of Record, denied in all petitions and briefs* to

have ever *advised your petitioner as to terms of policy Number 8 611 895.*

However, *disability of petitioner* was not the issue here, but as the Federal court's same decision *rules of the policy disability clause was NOT AMBIGUOUS,* said Federal court decision has *submerged the issue set out in petition in suit in Equity, FRAUD, and the same Federal court decision ruled it would not pass on FRAUD.* Yet Federal court decision rules *NO FRAUD was committed* by defendant, quote further below from Federal court decision, in excerpt: Quote

> "In view of the finding of fact just made, it is now proper to state a second conclusion of law, which is now stated as the Court's Conclusion of LAW, number 2. Under the facts and circumstances of this case, as shown in the evidence in this case, the defendant did not by any *FRAUD* on its part induce the plaintiff to consent to the surrender of the $50,000 policy or to the substitution therefor of the $25,000 policy".

As evidence before Federal court was defendant New York Life letter to petitioner dated July 25th, 1934, signed L. C. Shellhorn, Cashier, by M. M. McKenny. Quoted in full in petition for writ of certiorari, Number 587, last paragraph page #68 and continued through on page #69. Also mentioned Transcript of Record.

Mr. M. M. McKenny testified before Federal court that he did not know petitioner, had never met him, never talked to him until calling on petitioner at his office about July 24th, 1934, then returned to his own office and wrote petitioner his signed letter dated July 25th, 1934 (quoted in full in writ of certiorari), in confirmation of petitioner's request of office discussion. That petitioner never mentioned his operation, never mentioned his disability to him, Mr. McKenny, nor did Mr. McKenny mention anything to petitioner except as set out in letter of confirmation, Mr. Mc-

Kenny never calling on petitioner at his office after this date, July 25th, 1934.

Your petitioner had testified before Federal court to the same facts previous to Mr. McKenny testifying.

It is plain Mr. M. M. McKenny did not commit FRAUD on your petitioner as charged in petition for suit in Equity, FRAUD.

On July 25th, 1934, petitioner was only interested in surrendering $75,000.00 of defendant insurance all in full force with premiums paid in advance in four different defendant policies. Three of defendant policies were later surrendered for cash values by petitioner on the basis of advice given petitioner by defendant letter to petitioner dated July 25th, 1934, signed L. C. Shellhorn, Cashier, by M. M. McKenny. At the same time defendant reduced policy Number 8 611 895 from $50,000.00 to $25,000.00 and on the same defendant authority, defendant letter to petitioner dated July 25th, 1934. Petitioner, however, never did to date receive the cash surrender values in cash as set out in defendant letter to petitioner dated July 25th, 1934. What part of cash petitioner did receive from defendant petitioner was forced to hand back to defendant to pay premium on the $25,000 of insurance still remaining in policy No. 8,611,895.

Transcript of Record mentions defendant letter to petitioner dated August 10th, 1934, signed L. C. Shellhorn, Cashier, by M. M. McKenny, quoted in full in petition for writ of certiorari, No. 587, page 70-71 and also evidence before federal court trial. Also mentioned in Transcript of Record and also evidence before federal court trial was petitioner's letter to defendant Home Office dated August 11th, 1934, as quoted in full in petition for writ of certiorari, No. 587, page 72-73-74.

Mr. McKenny requested petitioner to write said letter to defendant Home Office dated August 11th, 1934, in place

of writing it by the defendant Kansas City Branch Office on the ground defendant Kansas City office made the error, it would be embarrassing to write Home Office and suggested petitioner so write Home Office. Mr. McKenny read petitioner's manifold copy of petitioner's letter to defendant Home Office dated August 11th, 1934, nor did Mr. McKenny deny having so read said petitioner's August 11th, 1934, to defendant Home Office in testifying before federal court.

On Mr. McKenny's interrogation on federal court witness stand as to whether he, McKenny, did read manifold carbon of petitioner's August 11th, 1934, letter to defendant Home Office Mr. McKenny remained silent beyond the reasonable time the Honored Federal Judge thought necessary and the federal court requested Mr. McKenny to make answer to question, McKenny then testifying "I do not remember". Petitioner has always believed had McKenny not been hurried thusly on witness stand McKenny might have testified differently, perhaps remembered. Mr. McKenny testified in federal ocurt that he, McKenny, was requested to call on petitioner at petitioner's office about July 25th, 1934, by Cashier Shellhorn or his assistant, Mr. Wells.

It is unusual a defendant of this colossal size in money and influence with its Cashier Shellhorn and his assistant, Mr. Wells both at defendant office and both available, would send their Mr. McKenny to call on petitioner at his office (a one hundred thousand dollar defendant policy holder in greater Kansas City), with McKenny not knowing petitioner, never having been in petitioner's office before about July 25th, 1934, and was forced to identify himself, Mr. McKenny, to petitioner to discuss petitioner surrendering $75,000.00 of defendant insurance, the $50,000.00 policy reduced to $25,000.00 through such McKenny office contact in force since year 1924, and the entire $100,000 of defendant

insurance in full force for years, and all in full force during July, 1934, and into August, 1934, particularly so as this defendant used petitioner as their advertisement to sell their wares in greater Kansas City. It is, of course, possible Mr. Wells, Cashier Shellhorn's assistant was in your petitioner's office in June, 1934, and sent to petitioner's office in June, 1934, by Cashier Shellhorn on petitioner's request to discuss terms of defendant policy No. 8,611,895, as well as terms in other three defendant policies.

If a federal court is to be permitted by Law to receive from a Missouri state Court petitioner's petition in suit in Equity charging Fraud against this defendant, year 1934, said Equity Suit filed in Missouri state Court, October, 1935, try said Equity Suit on Fraud in Federal Court without jury, deny petitioner the Right to prove Fraud, turn federal Court decision out of the federal judiciary mill wrapped up on an issue of permanent and total disability, ruling by both decision and written federal court opinion the disability clause in defendant policy was not *ambiguous*, then for the same federal court to later enter federal court temporary injunction staying proceedings in Missouri State Court (refiled by petitioner December, 1937, on second attempt for Justice) so Law would permit first a "Fair" trial on defendant Fraud—then let court rendered decision be what it may—the "administration of Justice" within the federal judiciary is not what it is claimed to be.

Federal Court decision, quoted in excerpt, ruled:

> "If the decision on that issue of fact which was decided in finding of fact No. 1 *had been otherwise*, and if the law as set out in conclusion of law No. 1 *had been otherwise*, and if, therefore, it had been decided that the plaintiff *was entitled to a reinstatement of the* $50,000 *policy, then it would have been necessary to have determined whether he was permanently and totally disabled as alleged in his bill, and whether, also,*

he had made proper proofs as required by the policy. Now, I do not intend to pass upon the issue of fact As To Whether The Plaintiff Mailed The Letters Described In Evidence As Exhibits 3 and 4, And Whether The Defendant Received Those Letters". End quote in excerpt.

The two letters, Exhibits 3 and 4 referred to in above decision are identified by date written in Transcript of Record in this case. One, written by petitioner and mailed June 29th, 1934, addressed to Home Office of this defendant appears in full on page 67, petition for writ of certiorari, No. 587.

The Veterans Administration requested your petitioner to immediately write this defendant Home Office this letter on June 26th, 1934, in fact Veterans Administration wrote your petitioner confirming their said verbal request on petitioner June 28, 1934, your petitioner writing this defendant Home Office June 29th, 1934, mailing letter by first stamping letter, nor was this letter ever returned to petitioner as petitioner testified in federal court. Veterans Administration records hold proof clearly indicating this defendant Home Office received petitioner's letter dated June 29th, 1934, and also this defendant Home Office undertook to withhold from Veterans Administration defendant 1932 medical examination made on petitioner as mentioned in petitioner's letter dated June 29th, 1934, to this Home Office specifically. (*Page* 25 *writ of certiorari*)

Your petitioner testified to foregoing facts in federal court trial, and Veterans Administration testified also with records before them and corroborated petitioner's testimony.

The other letter written by petitioner to this defendant Home Office, also an exhibit before federal court and as mentioned in decision, also mentioned in Transcript of Record, was petitioner's letter to this defendant Home

Office dated August 11th, 1934, and quoted in full on page #72 of petition for writ of certiorari, No. 587.

The foregoing brief in argument, page #14-15-16 refers to defendant official at Kansas City Office (Mr. M. M. McKenny) who requested your petitioner to write their Home Office on August 11th, 1934, and later read petitioner's manifold carbon copy of letter petitioner wrote, signed and mailed to this defendant Home Office dated August 11th, 1934, nor was letter ever returned by Post Office to petitioner. See page # 28 to #33, petition for writ of certiorari, No. 587 for full details on defendant official, M. M. McKenny, relationship with your petitioner. No insurance corporation is going to send to its $100,000.00 policy holder office who for years the insurance office had a personal relationship one of their officials a total stranger to policy holder, never in policy holder's office previously, did not make the office call on policy holder's request. Why should this defendant with your petitioner knowing personally the Kansas City Branch Office Cashier (L. C. Shellhorn) also his assistant (Mr. Wells) with both Shellhorn and Wells at this defendant Kansas City Branch Office when their Mr. M. M. McKenny (unknown to petitioner) walked into petitioner's office about July 24th, 1934, and commenced to discuss with petitioner cashing in $75,000.00 of his $100,000.00 insurance to receive cash value money not a day later than August 10th, 1934, if by the end of July, 1934, petitioner did cash in $75,000.00 of his $100,000.00 insurance. It is glaringly inconsistent on the face of it all.

Ever since Federal court rendered its decision November 23rd, 1936, your petitioner, under the Constitution of the United States, and under all LAWS ever declared to be the LAW by this Honorable Supreme Court of the United States, your petitioner always had the *RIGHT* to go back into his *own State Court of Missouri for JUSTICE* if the Federal court (even though the Circuit Court of Ap-

peals, Eighth Circuit, did uphold the Federal court on appeal Federal court injunction) had failed to render *JUSTICE* on a *suit in equity charging FRAUD first filed in a Missouri State Court but tried by Federal court because this defendant desired a Federal court (Not a Missouri State Court) to try the case and render so-called JUSTICE.*

On Page #76, petition for writ of certiorari, No. 587, appears:

> *Statement of Basis on Which the Jurisdiction of this, The Supreme Court of the United States is invoked.*
>
> The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by Act of February 13, 1925, Chapter 229, Section 1, 43 Stat. 938 (28 U. S. C. A. 347 a), and under same Act, Chapter 229, Section 8,43, Stat. 940 (28 U. S. C. A. 350).
>
> *Specification of Errors Intended to Urge.*
>
> 1) The Circuit Court of Appeals Eighth Circuit erred in affirming judgment of the District Court in favor of respondent.
>
> 2) The Circuit Court of Appeals Eighth Circuit erred in not holding that by reason of the prohibition contained in Section 379, U. S. C. A., Title 28, Section 365, Judicial Code, A FEDERAL COURT MAY NOT STAY PROCEEDINGS *IN PERSONAM* pending in a state court.
>
> 3) The Circuit Court of Appeals Eighth Circuit erred in not holding that after a COURT IN EQUITY has decided the *EQUITABLE ISSUES ADVERSELY TO THE PETITIONER*, such *COURT HAS LOST JURISDICTION TO TRY AND DETERMINE LEGAL ISSUES.*

The Federal court never had a legal *RIGHT* to enter Federal court temporary injunction and thus stop proceedings in a Missouri State Court on an action IN PERSONAM.

The Circuit Court of Appeals, Eighth Circuit, never had a legal right, on appeal, to affirm Federal court's judgment.

While the Federal court rendered decision rules there was no defendant FRAUD, the same rendered decision plainly states the Federal court did not pass on the issue of FRAUD set out in petitioner's suit in equity charging FRAUD for year 1934, and the Federal court decision rules—"Now I do not intend to pass upon the issue of fact as to whether the plaintiff mailed the letters described in evidence as Exhibits 3 and 4, and whether the defendant received those letters, etc.".

When your petitioner decided to enter petition for suit in equity charging FRAUD in year 1934 before a Missouri State Court (jury trial compulsory in Missouri), and so filed petition in said suit in equity charging FRAUD year 1934 in Missouri State Court, October, 1935, petitioner was legally forced to prosecute his equity suit FRAUD charge from the start of petitioner's first discovery of defendant FRAUD which was when defendant official, Mr. M. M. McKenny walked into petitioner's office on or about July 24th, 1934, unknown to petitioner.

What put Mr. M. M. McKenny in petitioner's office (and not on request of petitioner) stepped back to petitioner being in Veterans Administration's office June 28th, 1934, Veterans Administration requesting petitioner to sign their affidavit on June 28th, 1934, for Retired Officers Emergency List which your petitioner could not sign, and did not sign June 28th, 1934, due to lack of records and dates, etc.

On June 28th, 1934, also the Veterans Administration requested petitioner to sign still another one of their affidavits, for government insurance benefits. As petitioner did not sign this Veterans Administration's second affidavit, and also for lack of knowledge, etc., on definite data, it so happens petitioner did not definitely know if his defendant $100,000.00 insurance then in full force and effect

provided terms of *LIFE, HEALTH and Accident*, or only *LIFE and ACCIDENT*, and the Veterans Administration demanded to know true facts, in fact offering themselves to petitioner as willing to look over all his insurance policies, both in force and not in force, to advise him the correct coverage or policy terms. The defendant letter to petitioner dated January 9th, 1924 (as mentioned in foregoing brief in argument, page 18 also starting with page #18, paragraph three, continuing through to pages 23-24-25), advised your petitioner terms of policy No. 8 611 895 to be *LIFE and ACCIDENT*. Since receipt of defendant letter dated January 9th, 1934, the foregoing request on petitioner and by Veterans Administration on June 28th, 1934, was the first occasion petitioner had where he was forced to state, and by sworn affidavit, if his defendant $100,000.00 insurance was *LIFE, HEALTH and ACCIDENT, or LIFE and ACCIDENT or STRAIGHT LIFE.* Petitioner, in the course of his normal life, had purchased a countless number of insurance policies and from a countless number of insurance companies, one of which was this defendant. All were required to be shown on Veterans Administration affidavit (whether in force or not in force) so if petitioner erred in insurance policies *NOT IN FORCE* in a signed affidavit with Veterans Administration it would not have mattered a great deal, but with this defendant insurance policies (four all told) all in full force and effect June 28th, 1934, falsifying a Veterans Administration's affidavit appeared a serious matter to petitioner. It can be stated here by your petitioner he went over all insurance policies ever purchased by him from his first insurance policy in 1905, among which was this defendant's four policies, and while signing Veterans Administration affidavits (two different forms) Veterans Administration requested petitioner to sign June 28th, 1934, your petitioner did sign these two Veterans Administration's affidavits,

but not on June 28th, 1934, nor on June 29th, 1934, but later, and when so signed, one of said Veterans Administration's affidavits governing government insurance benefits states thereon, and over petitioner's signature, this defendant four policy insurance coverage provided only *LIFE and ACCIDENT* terms.

On morning of June 29th, 1934, your petitioner had a personal discussion with defendant Cashier, L. C. Shellhorn, in charge of defendant Kansas City Branch Office, requesting Cashier Shellhorn to send his policy expert down to petitioner's office that morning (June 29th, 1934) obtain from petitioner the four defendant policies and analyze said policies as to terms. Accordingly defendant Cashier Shellhorn sent to petitioner's office his assistant, Mr. Wells, who entered petitioner's office, said he had been sent by Cashier Shellhorn and what for, and petitioner's secretary obtained from the cabinet the four defendant policies, handed same to defendant Mr. Wells who then left your defendant's office, advising he would return later in the day, June 28th, 1934, and return policies. Defendant Mr. Wells never since entered petitioner's office; but Cashier L. C. Shellhorn, on the afternoon of June 29th, 1934, advised your petitioner his four defendant policies did not contain a HEALTH provision, but did provide a LIFE and ACCIDENT coverage, and accordingly your petitioner's signed Veterans Administration signed affidavit states this defendant insurance to be terms of *LIFE and ACCIDENT*.

The terms of defendant policy turned out to be *LIFE, HEALTH and ACCIDENT*, and with a *DISABILITY POLICY CLAUSE* in defendant policy No. 8 611 895 identically the same as appearing in this same defendant policy before Court of Appeals, Missouri, when this court rendered decision May 8th, 1934, in *Rickey* v. *New York Life Insurance Corporation*, No. 22787, S. W. Reporter, 2d series, #71, page #88, as set out in foregoing brief in

argument, page SIX, and likewise as set out more fully in your petitioner's motion for rehearing granted by this Court April 17th, 1941, page FOUR.

Your petitioner had no suspicion this defendant Cashier, L. C. Shellhorn, and his assistant, Mr. Wells, would deny their personal contact with petitioner (also with secretary in the case of Wells) June 29th, 1934, until they both testified in Federal court. Proof will be given below to show your petitioner was justified these two individuals, defendant officers, would testify in Federal court to the true facts as they know them.

In petitioner's joint discussion with Cashier Shellhorn *and Mr. McKenny on September 11th, 1935* (when petitioner first discovered defendant FRAUD), Cashier L. C. Shellhorn admitted to petitioner in his defendant office that he, Shellhorn, about *June, 1934, was requested by petitioner to send policy expert to petitioner's office, and that he, Shellhorn, did send his Mr. Wells to petitioner's office*, but explained to petitioner Mr. Wells was incompetent to analyze a defendant policy, not having an expert policy analyst to send to petitioner's office morning of June 29th, 1934, and petitioner was in a hurry for a policy analysis. Wells was incompetent, regretted, etc.

Your petitioner testified to above facts in Federal court, his secretary so testified, Veterans Administration testified in corroboration, and against this preponderance of witness testimony, by petitioner, confirmed by Federal court decision relating to Exhibits 3 and 4 (petitioner's June 29th, 1934, and August 11th, 1934, letters to defendant *HOME OFFICE*), the Federal court decision ruled no defendant FRAUD. The same Federal court decision rules the court would not pass on issue of *FRAUD*.

Against the preponderance of petitioner's Federal court testimony and evidence, one lone individual (a defendant official) testified in Federal court "that he, Wells, did not

call upon petitioner in his office June 29th, 1934, that he, Wells, was not sent to this office by Cashier Shellhorn, that he, Wells, was never in petitioner's office in his life, etc.".

The Federal court decision, quoted in excerpt ruled:

> "In connection with this declaration of law, and as a corollary thereto, the court further declares the law to be; that under the facts and circumstances of this case, an insured to whom a policy of insurance has been delivered, who has that policy in his possession, *if there is nothing in the application for the policy that is inconsistent with the terms of the policy, is CONCLUSIVELY PRESUMED TO KNOW THE PROVISIONS OF THE POLICY*, and that under the facts and circumstances of this case, this plaintiff was conclusively presumed to know that the $50,000 policy did contain a provision entitling the insured under certain conditions therein stated to the indemnity mentioned of $500.00 per month upon receipt of due proof that the insured was totally and permanently disabled."

The excerpt of Federal court's decision quoted on page seventeen foregoing brief in argument concludes "*NOW, I DO NOT INTEND TO PASS UPON THE ISSUE OF FACT AS TO WHETHER THE PLAINTIFF MAILED THE LETTER DESCRIBED IN EVIDENCE AS EXHIBITS 3 and 4, AND WHETHER THE DEFENDANT RECEIVED THOSE LETTERS*".

Petition of writ in certiorari, Number 587, page #23-24-25-26-27-28-29, on irregularities, discrepancies, FRAUD all proved to exist on photostatic copy of medical examination against which policy No. 8 611 895 was issued by defendant when compared to policy, documentary evidence before Federal court this was wrong, and yet more, in answer to Federal court's above quoted decision where decision states "*if there is nothing in the application for the policy that is inconsistent with the terms of the policy*". Tersely here signed application specifies policy to be issued was *Ordinary*

Life, 2) policy issued was *LIFE, HEALTH* and *ACCIDENT*, 3) defendant letter January 9th, 1924, states policy terms *LIFE and ACCIDENT*, in force and effect January 2nd, 1924; 3) Home Office by pen and ink notation last page policy put policy in force June 4th, 1924, front page of policy states went into force and effect January 2nd, 1924, and HOME OFFICE, nor anyone or any defendant office advised petitioner said change; had been made in policy as to terms against signed application, when policy in force and change as to date in force made by *HOME OFFICE*, and 4) this defendant issued policy No. 8 611 895 and put policy (*AT HOME OFFICE*) into force and effect June 4th, 1924, on medical examination made *November 30th, 1923, glaringly* against its own *Rules and Regulations*, Rules and Regulations undoubtedly followed by all Insurance Underwriters and also undoubtedly by LAW itself, and kept all knowledge of all this religiously from petitioner, in fact safeguarded petitioner from discovering this defendant FRAUD back in 1923-1924 by volunteering to act as petitioner's *INSURANCE ADVISOR* on all individual insurance coverage for self and family to the end no competitive insurance might ever obtain possession of defendant policies to analyze said policies for petitioner, and 5) This was evidence before Federal court both at trial, but on motion for rehearing with affidavit support which Federal court denied, affidavit setout petitioner's Federal court subpoenaed witness interferred with by this defendant during session of trial, defendant requesting witness not to testify at trial as to his knowledge—this witness requested your petitioner to let him have defendant policies first in September, 1933, to analyze policies to see if contained disability clause and was refused by petitioner and advised petitioner would depend upon defendant for any such advice; and within one hour after defendant official Wells left petitioner's office with defendant policies morning of June 29th, 1934, this

same Federal court subpoenaed witness thus interfered with by defendant at trial, entered petitioner's office and again requested defendant policies to analyze and see if contained disability clause, but witness was advised by petitioner defendant Wells had just left your petitioner's office with defendant policies to analyze for the same thing.

In the face of this documentary evidence setout before Federal court during trial the above quoted rendered decision was in error; and it also was a Federal court error in denying motion for rehearing with said affidavit support—as set out pages 14-15-16 petition for writ of certiorari, No. 587.

On your petitioner's permanent and total disability (against Federal court's legal *RIGHT* under Supreme Court of the United States LAW on petition for suit in equity charging FRAUD) Federal court decision found, quoted in excerpt:

> "He certainly is totally disabled, I would think, from carrying on the same kind of business enterprise as that upon which he was engaged and at which he was very successful. He cannot do that, nor anything of that character, etc.".

Petition for writ in certiorari, No. 587, starting with last paragraph page #42, continuing through to page #46—also pages #20-#21, gives full particulars a Federal court issued and served subpoena on hospital to produce hospital report on petitioner as evidence before Federal court trial was ignored by hospital, official hospital report not so produced as evidence before Federal court trial. Last paragraph page #42 writ of certiorari, Number 587, states Veterans Administration hold proof petitioner suffered relapse—stomach hemorrhage—on December 6th, 1936, three days following Federal court denying motion for rehearing.

Your petitioner put no evidence before Federal court trial that petitioner could not do work other than his regular business endeavor for twenty years before his disability as it was unnecessary. In proving disability for regular line of work evidence went before Federal court, petitioner's physical condition not permitting petitioner to do his regular line of work, carrying on office work in connection therewith met with failure, severe stomach hemorrhage and confined to bed for months. This defendant subpoenaed witnesses, however, at trial; and by petitioner's own associates, proved it all to Federal court for petitioner which was contrary to what this defendant hoped for, but defendant did succeed in obtaining a Federal court decision in disagreement with Missouri's State Established Law on disability, but not on evidence before trial to justify any such decision. The Federal court sincerely did not believe, in petitioner's conviction, defendant policy disability clause was *AMBIGUOUS*. However, as all Missouri Court Judges did believe, and still do believe disability clause in defendant policy No. 8 611 895 to be *AMBIGUOUS*, the issue here is Federal court entering temporary, permanent injunctions, court's final decree (Marshall to destroy defendant policy No. 8 611 895, the LAW) all on appeal before this Honorable Supreme Court of the United States.

The Federal court never had a legal RIGHT to stop proceedings in a Missouri State Court in an action IN PERSONAM, as under the Constitution of the United States, any and all Laws ever declared to be LAW by this Honored High Court, Missouri State Court Judges have a RIGHT legally to try your petitioner's above entitled cause against this defendant.

When the Federal court ruled by decision, and adversely to petitioner on suit in equity before Federal court charging FRAUD, such Federal court *LOST JURISDICTION to try and determine LEGAL ISSUES (DISABILITY UNDER*

POLICY CLAUSE IN DEFENDANT POLICY), as fully setout in petition for writ of certiorari, Number 587.

This defendant in its opposition brief entered just previous to the Supreme Court of the United States order entered April 7th, 1941, on equally divided court, rehearing granted petitioner April 17th, 1941, attempted to support Federal court RIGHT to stay proceedings by injunction in Missouri State Court on appeal in above cause, claiming the right of injunction went back to the time of King Henry Eighth and Cardinal Wolsey.

In the Supreme Court of the United States decision rendered April 25th, 1938, *Erie Railroad Company v. Tomkins*, No. 367, U. S. Rep. Vol. 304, October Term, 1937, page #64, decision delivered by Mr. Justice Brandies—decision by Mr. Justice Holmes appears, as follows—quote:

> "The fallacy underlying the rule declared in Swift *v.* Tyson is made clear by Mr. Justice Holmes—23. The doctrine rests upon the assumption that there is 'a transcendental body of law outside of any particular state, but obligatory within it unless and until changed by statute', that federal courts have the power to use their judgment as to what the rules of common law are; and that in the federal courts 'the parties are entitled to an independent judgment on matters of general law', but law in the sense of which courts speak of it today does not exist without some definite authority behind it. The common law so far as it is enforced in a State, whether called common law or not, is not the common law generally but the law of that state existing by the authority of that state without regard to it may have been in *ENGLAND* or anywhere else * * * 'the authority and only authority is the State, and if that be so, the voice adopted by the State as its own (whether it be of its legislature or of its Supreme Court) should utter the last word'. * * * Thus the doctrine of Swift *v.* Tyson is, as Mr. Justice Holmes said, 'an unconstitutional assumption of powers by Courts of the United States which no lapse of time or

respectable array of opinion should make us hesitate to correct.' "

In petition for writ of certiorari, Number 587, is to be found quoted in full on page #83 written opinion by Federal court when entering Federal court temporary injunction stopping proceedings in Missouri State Court contrary to well setout, likewise in writ, United States Supreme Court LAWS: It seems unnecessary to quote therefrom except the following excerpt here—quote

"Had there been an appeal the Circuit Court of Appeals would have heard the case *de novo*. It might well have disagreed with our finding of fact No. 1 (Petition for suit in equity, FRAUD) and nevertheless affirmed the degree because of finding of fact No. 2 Disagreement with Missouri State Established Law on disability). Certainly the decision of an issue which might be the sole basis for affirmance of a degree is a decision arising to the dignity of res adjudicata".

Your petitioner believes, together with foregoing comment in this brief in argument, and with direct reference to clause #1, page #1 of brief—*WHY DID THE STATE OF MISSOURI ADOPT MISSOURI STATE ESTABLISHED LAW LEGALLY INTERPRETING THE INSURANCE POLICY DISABILITY CLAUSE*—and also to what petitioner points to in last paragraph page #3 foregoing brief in argument, this written opinion by Federal court is a plain admission, and by the Federal court itself, the issue of FRAUD as setout in petition for suit in equity charging defendant *FRAUD* before this Federal court to determine (FRAUD) was giving scant consideration by Federal court (and FRAUD not determined even though decision rendered November 23rd, 1936, rules NO FRAUD) which equity issue of FRAUD was entirely superseded by the injecting in same decision (and contrary to United States Supreme Court LAW) ruling on disability

clause of policy, declaring your petitioner while "disabled for his regular line of work" still could do some other kind of work and thus disagreed by Federal court decision with the controling LAW of Missouri on the insurance policy *AMBIGUOUS* disability clause. Here in this written opinion Federal court admits higher court "might well have disagreed with our finding of fact No. 1 (Fraud) but affirmed the decree because of finding of fact No. 2 (Disability).

Your petitioner will now quote directly below still another written opinion by Federal court when denying motion for rehearing December 3rd, 1936, with affidavit support showing defendant interference with petitioner's Federal court subpoenaed witness during session of trial with knowledge on FRAUD, thus denying petitioner the legal *RIGHT* to prove FRAUD.

With the controlling Missouri State Court decisions (Missouri State Established Law) having already driven this defendant out of the State of Missouri with form policy No. 8 611 895 and its AMBIGUOUS disability clause in your petitioner's above entitled cause supporting Federal court in the rendered decision November 23rd, 1936;—*ON THE BOTTOM*—and with the United States Supreme Court decision (*Mutual Life Insurance Company of New York* v. *Johnson*, 293 U. S. 335, 340, opinion written by Mr. Justice Cardozo December 3rd, 1934) supporting this Federal court's legal action (denied motion for rehearing) so that FRAUD charged in petition for suit in equity could be proven,—*SUPPORTING THE FEDERAL COURT FROM THE TOP*—in the face of bottom and top support such as stated, on December 3rd, 1936, Federal court entered following written opinion giving Federal court's legal interpretation of disability clause in policy No. 8 611 895 in above cause—quote

> "In support for the motion for rehearing plaintiff's learned counsel has submitted an exhaustive and most

scholarly brief. We have studied this brief as it deserves to be studied. It is not necessary, however, to consider more than one point urged in the brief and upon oral argument by the author of the brief.

By the contract in this case plaintiff was insured against becoming so permanently and totally disabled as that he could be prevented thereby from engaging "in any occupation whatsoever for remuneration or profit." We found, on the issue of facts, that the plaintiff was not so totally and permanently disabled as to be prevented from engaging in "any" occupation. Our precise language in this finding of fact was as follows:

"This contract says that to be totally disabled he must be unable to engage in any occupation whatsoever for remuneration or profit. Now that means any one of a thousand occupations. I have not the slightest doubt but that the defendant has the ability, for example, to carry on the occupation of clerk of this court, or the deputy clerk who sits here in this chair, or work of any similar character. I believe that it has not been proven that the plaintiff, within the meaning of this contract, is not now nor never has been at the time alleged in the petition wholly disabled by bodily injury or decease, so that he is prevented thereby from engaging in any occupation whatsoever for remuneration or profit, and I think the fact to be that he is not and has not been so disabled".

"It is now contended by learned counsel for plaintiff that under the Missouri decisions the contract provision here quoted must be overruled as if it insured the plaintiff against becoming totally disabled from engaging *in his usual occupation.*

When the case was tried we believed the law to be that a federal court would use its own judgment in construing the provisions of the insurance contract. Our attention was not then called to the opinion of Mr. Justice Cardozo in *Mutual Life Insurance Company* v. *Johnson*, 293 U. S. 335, and we did not then give consideration to that opinion. It cannot be doubted that

the Supreme Court did rule in that case, as the opinion shows, that the federal courts should adopt the state courts' construction of the insurance contract provision which is *ambiguous* in its meaning. It is said in the opinion that where, as in the case then under consideration, the matter for decision—

"is the meaning, the tacit implication, of a particular set of words, which, as experience has shown, may hold a different answer to this reader and to that one as we accept as our guide the law declared by the state where the contract had its beginning."

"We think the law declared in the *Mutual Life Insurance Company* v. *Johnson* (which, of course, we are duly bound to follow, if it is applicable) does not apply here. The language of the contract here is not ambiguous. It is not such as yields "a different answer to this reader and to that one" although conceivably one reader may *say* that it has a meaning which the language does not *yield*. To say that the words "any occupation whatsoever" mean the "usual occupation of the insured" is to give to those words, as we somewhat intemperately remarked at the oral argument, not a "liberal" interpretation, but an utterly "*wild*" and wholly unjustified interpretation. Nor are we able to accept as sound the argument made in this connection (it is even suggested parenthetically by Mr. Justice Cardozo in his opinion) that because some courts may have given a distorted significance to plain words that, therefore, the plain words must be *AMBIGUOUS*. If we have to interpret a sentence reading "*THE CAT IS BLACK*" we would not think it *ambiguous* and of doubtful meaning even if *five hundred* men declared that what really was meant is "*THE CAT IS WHITE*".

Even in those cases in which the federal court is bound to accept the construction of state courts (as the construction Missouri Court of Appeals: *Federal Lead Company* v. *Sawyer* (8 C. C. A.) 161 Fed. 687. It is frankly conceded, however, by learned counsel for the

plaintiff that the only Missouri Courts which have construed the insurance provision involved here as plaintiff contends this one should be construed are the decisions of the courts of appeals of Missouri. In no event are we bound by their decision.

The motion for a rehearing is overruled. IT IS SO ORDERED. To this order plaintiff is allowed an exception."

In thus defending and supporting by LAW the Insurance Corporation contention in above entitled cause, the defendant here, this Federal court states, both by decision (November 23rd, 1936) and written opinion (December 3rd, 1936) the disability clause in defendant policy No. 8 611 895, above cause, it is not *PHRASED AMBIGUOUSLY*, that it means a policy holder having in his possession such defendant policy with said disability clause must first *prove that he lay the full period of his injury in a state of coma* when, perhaps, this Federal court would declare it to be the LAW under the Constitution of the United States this defendant, standing here before this Honorable Supreme Court of the United States today, would be liable. Otherwise not.

The Federal court also *MEANS* to say it is the LAW that the unsuspecting public buying insurance policies with the identical disability clause therein as in policy No. 8 611 895 issued to petitioner by defendant in 1924, defendant collecting thousands of dollars in premiums from petitioner since 1924, can keep all the premiums thus collected; and also all other insurance corporations with still differently phrased policy disability clauses to the same end and for the same purpose as this defendant injected its policy clause in policy No. 8 611 895 governing disability can likewise keep policy holders money, *THE LAW*, this Federal court thus legally interpreting the *LAW* to be, interpreting the legally admitted *AMBIGUOUS* pol-

icy clause by Missouri State courts as *NOT AMBIGUOUS* and under such Federal court legal interpretation, and by decision, this defendant *WINS* if such decision and written opinion by this Federal court stands, supported as it is by the Circuit Court of Appeals, Eighth Circuit, defendant can continue to collect its premiums from policy holders on a policy contract legally said to be, and so declared by Missouri State court decisions, as utterly useless to an insured, and is nothing short, practically speaking, "*of collecting a premium without rendering a consideration*". This is the language of Missouri courts as shown by one of Missouri's 1905 court decisions set out on page FOUR of foregoing brief in argument; also on page FIVE of same said brief in argument, rendered year 1937.

Petitioner also refers to his motion for rehearing granted by this Honored Supreme Court of the United States in above cause April 17th, 1941, page FOUR. Here is shown the *Rickey* v. *New York Life Insurance Corporation*, No. 22787, S. W. Reporter, 2d series, #71, page #88. *Decision rendered May 8th, 1934, Missouri Court of Appeals.* Before this Missouri court was the same defendant policy, with the same *AMBIGUOUS* disability policy clause as is evidence here by your petitioner in above entitled cause against this same defendant. And the Missouri court in 1934 said—first declaring by decision "*plaintiff's evidence must be deemed true, defendant's CONTRADICTORY EVIDENCE MUST BE DISREGARDED*", *and the court then* said—

> "Having in mind the foregoing rules, can it be said that plaintiff, by his extraordinary efforts to make a living for his family and himself, thereby furnishing evidence which, as a matter of LAW, will defeat his claim for disability benefits".

The Missouri court 1934 decision as mentioned in the foregoing paragraph had its origin in year *1921* when this

same defendant, as here, sold a Missouri citizen its policy with the *same disability clause as in policy No. 8 611 895 before the Federal court in rendered decision, November 23rd, 1936, and written opinion December 3rd, 1936, already quoted.* This defendant kept this Missouri policy holder of their's in *court from a start of 1921 until the Missouri Court of Appeals rendered its decision, as quoted, May 8th, 1934.*

In the *Rickey* v. *New York Life Insurance Corporation* case, No. 22787, the policy holder, while not being able to work at his "*regular line of work*" he did work "*at some other kind of work*".

With your petitioner in the above entitled cause, and as testimony and evidence proved before the Federal court trial on petition for suit in equity charging FRAUD 1924, petitioner did not work at "some other kind of work". Petitioner tried to, never received "*any*" "remuneration or profit" and of this the Federal court was well aware. It is plain the Federal court believes it to be the LAW, under disability clause in policy Number 8 611 895 that policy holder must lie in a continuous state of coma during period of disability. The Federal court rendered decision, however, failed to require this defendant State such a provision clearly in its policies together with its atrocious disability clause. The Missouri Supreme Court in its rendered decision quoted on page FIVE of foregoing brief in argument on motion for rehearing granted had before it, cited as a precedent case, the *Rickey* v. *New York Life Corporation* case, Number 22787.

Appeal on Federal court temporary injunction stopping proceedings in Missouri State court on petition for suit in equity charging FRAUD (filed in Missouri State court, October, 1935) was filed with Circuit Court of Appeals, Eighth Circuit, decision rendered February 24th, 1939.

Your petitioner was very greatly interested in respondent's brief in opposition to Supreme Court of the United States taking jurisdiction on petitioner's petition for writ of certiorari, No. 587, filed by petitioner November 9th, 1940. In fact on page Twenty Five in foregoing brief in argument on rehearing motion granted by this Supreme Court mention is therein made of respondent's brief.

In said respondent's brief, page #15 defendant states—

> "The reasoning of the Eighth Circuit on this point is unanswerable. Judge Woodrough said, in 102 F. (2d) at page 20". Then quotes the Honorable Judge.

This same decision rendered by the Circuit Court of Appeals Eighth Circuit said—quote in excerpt:

> "It is well settled 'where a bill states a case entitling the complainant to equitable relief, if the proof fails to establish the averments of the bill in that respect *the court is without jurisdiction to proceed further and determine rights that are cognizable in a court of law*". It is also the rule "that where a cause of action cognizable at law is entertained in equity on the ground of some equitable relief sought by the bill, which it turns out cannot, for defect of proof or other reason, be granted, the court is without jurisdiction to proceed further, and should dismiss the bill and remit the cause to a court of law. The decision here incorporates therein a number of precedent cases in support".

The Circuit Court of Appeals, Eighth Circuit, however, from their judicial reasoning then said—quote

> "After that final adjudication had been made and decree entered, a law case for recovery of disability benefits has been *ingeniously made* out of the face of a petition in the State court by simply omitting the facts as they were established between the parties in the Federal equity suit. The pleader has omitted to show that Mr. Toucey made application to the insurance company for reduction of his policy and that pursuant

to that application the alteration and reduction of the policy as to premium and benefits was made and that he had recognized the change in the contract by making a payment of premium at the reduced premium rate. *THE HOPE OF THE PLAINTIFF IN THE LAW CASE MANIFESTLY IS TO FRAME THE PLEADINGS SO AS TO ASSERT A CLAIM OF FRAUD AGAINST THE COMPANY IN A SUBSEQUENT PLEADING.*"

The full truth in the petition for suit in equity charging FRAUD and tried before Federal court was stated by petitioner and witnesses, also evidence such as witnesses and evidence subpoeaned by Federal court succeeded in getting before the court. It did get befor the Federal court and by affidavit on motion for rehearing this defendant interfered with petitioner's subpoeaned witness with knowledge on FRAUD. The Federal court in written opinion states it was necessary to only mention one point on denying motion for rehearing (*NOT FRAUD*) but a lengthy explanation as to why the disability clause in policy No. 8 611 895 was *NOT AMBIGUOUS*, why Federal Court did not agree with Missouri State Established Law, as well as why Federal court did not agree with decision rendered by the United States Supreme Court in the *Mutual Life Insurance Company of New York* v. *Johnson*, 293 U. S. 335, 340, decision written by Mr. Justice Cardozo, December 3rd, 1934. What the Federal court really said in written opinion of December 3rd, 1936, (quoted on page #27-28 of foregoing brief in argument granted by Supreme Court on motion for rehearing) was the Supreme Court of the United States decision here did not apply.

Wrapped up in said United States Supreme Court decision thus writen by Mr. Justice Cardozo was a precedent case cited to influence the court's judicial judgment, namely, "*Cf. Klein* v. *New York Life Insurance Company*, 104 U. S.

88, 26 L. Ed. 662'' and as it will be shown in quoting said Supreme Court decision below, this defendant here in above cause appeared before a Federal Court in Virginia, cited as a precedent, where a Virginia Federal Court was influenced to believe the disability clause in defendant's insurance policies was *NOT AMBIGUOUS* and rendered a decision in favor of defendant insurance. However, on appeal of said case in Virginia, the Circuit Court of Appeals Fourth Circuit over-ruled the Virginia Federal Court and the Supreme Court of the United States, decision written by Mr. Justice Cardoza affirmed. Here a policy holder of this defendant in the above cause, becoming insane, was defrauded by this sane defendant in the name of the LAW if *DEFRAUDING BY LAW* is an issue in the above entitled cause, and your petitioner is firmly convinced that it is all a deliberate attempt by this defendant to *DEFRAUD* your petitioner and so far has succeeded, the Federal Court's final decree with injunctions on appeal here having ordered the Marshal to destroy defendant policy No. 8 611 895 with abundant proof of this defendant FRAUD, the Circuit Court of Appeals Eighth Circuit even inferring LAW should so destroy.

That part of the Circuit Court of Appeals Eighth Circuit decision rendered February 24th, 1939, is in error relating to petitioner's premium payments on the $50,000.00 policy reduced to $25,000 as this defendant letter to petitioner dated July 25th, 1934, (signed M. M. McKenny) but over the signature of L. C. Shellhorn, Cashier, mentioned in Certified Record on appeal of equity suit charging FRAUD as appearing on page =68-69 petition for writ of certiorari, No. 587 in above cause proves.

This defendant here advised your petitioner that he not only would receive a given sum of money for surrendering defendant policies, also reducing the $50,000.00 policy to $25,000, but as it will be noted, premiums on the reduced

policy (Policy No. 8 611 895 in above cause) was paid up in advance until *January 2nd, 1935*. Policy No. 8 611 895 was lapsed by this defendant long before that date in 1934.

Your petitioner, after filing petition for suit in equity charging *FRAUD* in a Missouri State Court, October, 1935, was transferred by defendant to Federal Court, tried November, 1936; appealed a Federal Court entered temporary injunction stopping proceedings in a Missouri State Court because the Federal Court "missed the bus" and failed to "administer JUSTICE" when the suit in equity charging FRAUD was before Federal Court; and because the Federal Court wrongfully, and without legal RIGHT, injected into decision rendered issue on permanent and total disability under policy disability clause in policy No. 8 611 895, all contrary as well to controlling LAWS of Missouri, the controlling LAW of the United States Supreme Court (decision written by Mr. Justice Cardozo) also injecting into the rendered Federal court decision other issues having no legal RIGHT there as well, the Circuit Court of Appeals, Eighth Circuit, on decision rendered February 24th, 1939, rules your petitioner, if permitted to go into his own Missouri State Court and try this defendant for FRAUD the Circuit Court of Appeals, Eighth Circuit, refuse to permit your petitioner to so enter his own Missouri State Court on an issue of *DISABILITY* against this defendant, as to so permit, your petitioner would *FRAME* this defendant in a Missouri State Court on *FRAUD*.

Your petitioner here states Missouri courts perhaps know something about this defendant FRAUD against policy holders from some of the comments of Honored Missouri Judges in the rendered decisions set out in foregoing brief.

Your petitioner has quoted in excerpt, page #31 of foregoing brief on motion for rehearing that part of the decision rendered by Circuit Court of Appeals Eighth Circuit for the purpose here.

The Circuit Court states by its rendered decision it is the LAW that after a Federal Court in equity has decided the equitable issues adversely to the petitioner, such court has lost jurisdiction to try and determine legal issues. Sec. 265 U. S. C. Tit. 28, Sec. 379, to stay the law action in the state court.

Petition for writ of certiorari, No. 587, page ≡58 to page ≡87,

All that has happened since the above cause on a petition for suit in Equity charging FRAUD went before the Federal Court for trial (November, 1936) has been the injection of so-called Federal judiciary "legal technicalities"—"legal intricacies"—the same old defendant methods and attempts which worked for a long period of years in Missouri, but finally it failed (Missouri State Established Law on insurance policy disability clause) and it would also seem to have failed in Virginia from court decisions above quoted. Delayed JUSTICE, high court costs policy holder can't pay contrary to the State control law, rendered decisions, taken over and into the Federal judiciary all the legal imbroglios, publicly charged "Insurance Corruption by the State citizen, at least in Missouri, and your petitioner was selected by this defendant unquestionably as the victim to accomplish it for them in Missouri and route State established law in Missouri by reinstating in Missouri courts past *INSURANCE CORRUPTION* which was even running ahead of your petitioner from Missouri courts over into Federal Courts of Missouri, as by *INSURANCE CORRUPTION* deceiving a *three judge Federal Court in Missouri* (comprised of Federal judges in Kansas City and Circuit Court of Appeals Eighth Circuit) Missouri courts, losing control of a colossal sum of money ten to twelve millions of dollars first impounded and protected by Missouri courts, it finally fell heir to a *three judge Federal Court* in Missouri to *protect* it and this *three judge Federal* court *failed* to so

protect. Policy holders money went to a group of some 137 different insurance companies. That some of this insurance was *HONEST* seems possible, but to your petitioner *DOUBTFUL*, but whatever the case proves to be it is assured at this time the *DISHONEST* Insurance controlled the *HONEST*.

Missouri Courts, however, also *impounded a smaller sum* (about a million and a half) belonging to *Missouri policy holders* and this was *not transferred* to the *Federal judiciary, Missouri courts protecting it.*

Your petitioner makes this explanation here to show Missouri courts, and by long years of experience, have learned the *JUSTICE* in protecting policy holders, apparently not so susceptible to *CORRUPT INSURANCE* deceiving them.

Surely this defendant tried as much and perhaps more to deceive Missouri courts discovered Missouri State Established Law on insurance policy disability clause—the *AMBIGUOUS* policy clause—would be legally interpreted to be *AMBIGUOUS* in Missouri, had been and would continue to be, so your petitioner was taken out of a Missouri State court over into Federal Court. Result: The same *Federal judiciary legal imbroglio* as existed in Missouri State courts before *Missouri adopted Missouri State established law* as foregoing petition makes a humble attempt to write a history on from page one to page twelve.

As Mr. Justice Cardozo said in his rendered decision to now be quoted below—"No question is here as to any general principle of the law of Contracts of Insurance * * * with consequences broader than those involved in the construction of a highly specialized condition. All that is here for our decision is the meaning, the tacit implications, of a particular set of words, which, as experience has shown, may yield different answers to this reader or to that one. With choice so balanced with doubt we accept as our guide

the *law decided by the State where the contract had its beginning*".

Generally with insurance policy disability clause phrased somewhat different, one policy against the other, if the Insurance Company issuing a policy with its disability clause, its policy holders finding their way to Courts, both State and Federal, in droves, one at a time, unorganized, seeking legal interpretation of the disability clause in such a policy, surely the courts know, either State or Federal, the policy disability clause is *AMBIGUOUS*. This defendant with its form policy No. 8 611 895 in above cause, with its disability clause has been in continued court litigation on the issue of whether the disability policy clause was *AMBIGUOUS*, and time and again, in Missouri, defendant disability policy clause was held by court decision to be *AMBIGUOUS*. Finally, Missouri State Established Law on insurance policy disability clause settled it for all time until courts themselves, either Missouri or the Supreme Court of the United States, change it.

The defendant Court litigation with your petitioner here, and in above cause, aimed from the very start to obtain a *Federal court* decision in *disagreement with Missouri State Established Law on insurance policy disability clause, and with the hope, if so secured, for a United States Supreme Court concurrence with such Federal court disagreement.*

It is plain this has always been the issue. Was the Federal judiciary issue in Virginia, Pennsylvania as well?

With the rendered Federal court decision, November, 1936, with official hospital report subpoenaed, yet not produced as evidence before Federal court trial, with subpoenaed witness not testifying at trial (why did not matter) had the Federal court decision been appealed it might have jeopardized some three million policy holders in Missouri by adverse decision and by the Supreme Court of the United States. Hence the Federal court decision was not appealed.

The cost to appeal ($1500.00 as attorneys advised) was then beyond petitioner's resources, drain of disability and litigation, a method used by this defendant to avoid discussions with policy holder, delay, win in LAW. The defendant's deliberate aim here, your petitioner gradually was convinced, was a Federal judiciary general and legal interpretation the policy clause was *NOT AMBIGUOUS* and thus route *State Established Law.* In Missouri this defendant had failed to do so after years of effort.

Quick *JUSTICE* was assured under United States Supreme Court *LAW* if this *defendant directorate, advertised in the press* and magazines at great cost, *DIRECTORS WORKED WITHOUT SALARY, PROTECTING POLICY HOLDERS, GLADLY INVITING POLICY HOLDERS TO WRITE THEM FREELY, AND DIRECT, FOR THEIR POLICY PROTECTION.* Such an advertisement in the Saturday Evening Post influenced your petitioner to write this directorate in March, 1936, months before litigation was before Federal court. (See page 62 below, also petition for writ of certiorari page ≠28-41-32-33.) In fact, defendant directorate invited petitioner to settle the issue in court long after Federal court decision, November 23rd, 1936, with full knowledge on dispute long before November 23rd, 1936. *While Federal court decision not appealed,* as the *Federal court decision ruled adversely to your petitioner on petition for suit in equity charging FRAUD, Federal court had lost jurisdiction to pass on legal issues in decision, hence Supreme Court LAWS gave petitioner RIGHT to re-enter his own Missouri State Court. When petitioner did Federal court stopped State court proceedings, Federal court injunction was appealed.* Petitioner advised Federal court decision could not be appealed effectively, and why, that is, decision rendered November 23rd, 1936.

Your petitioner has always been convinced there was a conscientious difference of opinion between the Supreme Court of the United States LAWS governing *State Controlling LAWS* and what the Missouri Federal judiciary membership wanted to be the LAW. The Missouri end would "WRECK" democracy. If the Circuit Court could find ground for legal technicalities (which do not exist) in affirming equity issue Federal court entered injunctions stopping proceedings in Missouri State court, surely there did exist ample Federal judiciary LAW, both State and Federal, to justify the Circuit Court of Appeals, Eighth Circuit, to raise the question as to why Federal court, on a petition before it for suit in equity, charging FRAUD, rendered decision also injecting the issue of disability, and even there, contrary to Missouri State Established Law, supported by the United States Supreme Court decision written by Mr. Justice Cardozo, so frequently mentioned here, and also Supreme Court of United States decision rendered by Mr. Justice Brandeis previously quoted in both cases and to follow here in full reference. The Circuit Court rendered decision injected laws cited as precedent cases to justify affirming Federal court injunction not submitted by petitioner or defendant in the appeal and argument on Federal court entered injunction stopping proceedings on appeal, before it, in a State court.

This defendant has charged petitioner with not conforming to rules and regulations of the Federal judiciary. Your petitioner assures this Honorable Court to the best of his ability Federal judiciary rules and regulations have been read and followed.

On the other hand "the administration of justice", as intended by the Constitution of the United States, intends courts will observe, follow, and render decisions proving within themselves JUSTICE was "administered". *JUSTICE* has been denied your petitioner both by the Federal

court and the Circuit Court of Appeals, Eighth Circuit, and the written decision does appear in the above entitled cause in proof thereof. A colossal number of insurance policy holders have been denied JUSTICE by Federal judiciary courts in Missouri, and publicly charged *INSURANCE CORRUPTION* laid at the door of Missouri Insurance by the press of the State. If insurance policy holders have made gains towards the quick "administration of justice" by Federal courts since Federal court rendered decision here November 23rd, 1936, it is here the effort of your petitioner to retain it both for himself and his other insurance policy holders.

As set out on page #1 of foregoing brief, in argument on motion for rehearing, this concludes clause #2 and we pass on to the next:

In the order named on page #1 of this brief, paragraph #3.

UNITED STATES SUPREME COURT GOVERNING LAWS.

The jurisdiction of Supreme Court is invoked under Section 240 (a) of the Judicial Code as amended by Act of February 13, 1925, Chapter 229, Section 1, 43 Stat. 938 (28 U. S. C. A. 347a) and under same ACT, Chapter 229, Section 8, 43 Stat. 940 (28 U. S. C. A. 350).

By the Provisions of Section 379, U. S. C. A., Title 28, Section 265, Judicial Code, *A FEDERAL COURT MAY NOT STAY PROCEEDINGS IN A STATE COURT WHERE THOSE PROCEEDINGS ARE IN PERSONAM.*

* * * * * * *

Mutual Life Insurance Company of New York v. *Johnson, 293 U. S. 335, 340.*

Argued November 15th, 1934, decided December 3rd, 1934.

Mr. Justice Cardozo delivered opinion of Court.

On writ of certiorari to the United States Circuit Court of Appeals for Fourth Circuit to review a judgment of the District Court of the United States for the Western District of Virginia on a verdict directed for *defendant* in an action on a life insurance policy.

Affirmed. See case below, 70 F. (2d) 41.

When last premium on insurance policy due for life coverage, with disability provisions, the insured was confined to his bed, a sufferer from chronic nephritis which later resulted in his death. There was evidence he was permanently and totally disabled, not only mentally, but physically to such extent he was unable to give notice. The Insurance Company takes the position, that due to the omission of the notice, the default is unexcused and the policy lapsed.

Conflict of Laws. Interpretation Life Insurance Policy

1) A Life Insurance Policy is to be interpreted in accordance with the law of the state in which it was delivered to the insured, where resident.

COURTS **850; Federal Courts following State Decisions—Insurance Matters.*

2) In determining whether the giving of the notice of total and permanent disability of the insured contemplated by the provisions of the Life Insurance Policy that the insurer will waive premiums becoming due during such disability, after due proof thereof, is excused by the physical and mental incapacity of the insured to give such notice, the Supreme Court of the United States will follow the law of the state in which the policy was delivered to the insured, there resident.

*COURTS, *788; Federal Courts following State decisions—in general.*

3) In cases of uncertainty the federal court should follow the decisions of the courts of the state in which the transactions in question took place when harmony can thus be obtained without the sacrifice of ends of national importance.

In this action the District Court upheld the Company's position and directed a verdict for defendant. The Court of Appeals for the Fourth Circuit reversed and remanded the case for retrial; 70 F. (2d) 41.

For the defendant it was argued that insanity is no more an excuse for the failure to give a notice that will cause the payment of premiums to be waived, than for the failure to make payments of premiums when waiver is not a duty either conditional or absolute; Cf. Klein *v.* New York Life Insurance Company, 104 U. S. 88, 26 L. Ed. 662.

For the plaintiff it was argued that waiver having been promised, though subject to a condition as to notice, there must be a liberal construction of a re-

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quirement that is "merely modal or procedural, and the insured will not be deemed in respect of matters of that order to have executed the impossible.

(Numerous precedent cases quoted in support of both defendant and plaintiff.)

The controversy is one as to which the courts of the country are arrayed in opposing groups.

The highest court of Virginia spoke as to the meaning and obligation of such a policy; Swan *v.* Atlantic Life Insurance Company, 156 Va. 852, 159 S. E. 192, supra, construing a provision substantially the same as the one in controversy here. The ruling there was that notice was excused by physical and mental incapacity to give it.

When the disability of the insured occurred while the policy was in force, he was entitled to have the pre-

miums waived until his death, for the disability continued until his death. He had paid for this right, and to say that he should lose the benefit of his policy because he failed, through mental and physical incapacity, to present proofs, would be harsh and unreasonable under the circumstances.

In this situation we are not under a duty to make a choice for ourselves between alternative constructions as the Courts of the place of contact were silent and uncertain. Without suggesting an independent preference either one way or the other, we yield to the Judges of Virginia expounding a Virginia policy and adjudging its effect. The case will not be complicated by a consideration of our power to pursue some other course. The summum jus of power, whatever it may be, will be subordinated at times to a benign and prudent comity. At least in cases of uncertainty we steer away from a collision between Courts of state and nation where harmony can be attained without the sacrifice of ends of national importance. No question as to a "rule of the law merchant" is presented in this case; Swift *v.* Tysen, 16 Pet. 1 (340), 10 L. Ed. 865. No question is here as to any general principle of the law of Contracts of Insurance; (Carpenter *v.* Provident Washington Insurance Company, 16 Pet. 495, 511, 10 L. Ed. 1044, 1051, Ætna Life Insurance Company *v.* Moore, 231 U. S. 543, 5509, 58 L. Ed. 356, 366, 34 S. Ct. 186) with consequences broader than those involved in the construction of a highly specialized condition. All that is here for our decision is the meaning, the tacit implications, of a particular set of words, which, as experience has shown, may yield different answers to this reader or to that one. With choice so balanced with doubt we accept as our guide the law decided by the state where the contract had its beginning.

The Judgment Is Affirmed.

* * * * * * *

Erie Railroad Company v. *Tompkins*, No. 367, U. S. Reports, Vol. 304, Page 64, October Term, 1937.

Argued January 31st, 1938. Decided April 25th, 1938.

Carpenter v. *Wabash R. R. Co., et al.*, 309 U. S. —23, No. 230 (1, 2). Decision rendered January 29th, 1940.

PETITION FOR WRIT OF CERTIORARI—Page #77.

ARGUMENT.

POINT A.

By the Provisions of Section 379, U. S. C. A., Title 28, Section 265, Judicial Code, a *FEDERAL COURT MAY NOT STAY PROCEEDINGS IN A STATE COURT WHERE THOSE PROCEEDINGS ARE IN PERSONAM.*

POINT B.

THE COURT, HAVING DETERMINED THE EQUITABLE ISSUES IN *THE ORIGINAL EQUITY PROCEEDINGS ADVERSELY TO PETITIONER. LOST JURISDICTION TO DETERMINE THE LEGAL ISSUE OF DISABILITY.*

POINT A.

It is clear that the original action in equity to avoid the reduction in the amount of the policy and to procure a reinstatement of that policy was an action *IN PERSONAM.*

It is clear that the action at law in the State Court brought by petitioner's assignee upon the policy to recover disability benefits was also an action *IN PERSONAM.*

Decision rendered by the Circuit Court of Appeals, Eighth Circuit, quoted in excerpt, page 43 foregoing brief in argument on rehearing granted by this Supreme Court said—

"After that final adjudication had been made and decree entered, a law case for recovery of *disability* ben-

efits has been *INGENIOUSLY MADE OUT OF THE FACE OF A PETITION IN THE STATE COURT BY SIMPLY OMITTING THE FACTS AS THEY WERE ESTABLISHED BETWEEN THE PARTIES IN THE FEDERAL EQUITY SUIT, etc.*"

The said decision then continues and says, quote—

"*THE HOPE OF THE PLAINTIFF IN THE LAW CASE MANIFESTLY IS TO FRAME THE PLEADINGS SO AS TO ASSERT A CLAIM OF FRAUD AGAINST THE COMPANY IN A SUBSEQUENT PLEADING.*"

The Circuit Court of Appeals, Eighth Circuit, in the foregoing excerpt of said decision thus quoted on this page said in the same decision (first quotation in excerpt quoted on page 43 foregoing brief in argument on rehearing granted by this Court) that it *WAS THE LAW* declared by the Supreme Court of the United States under the statutes set out at the top of this page this Federal court did not have a legal RIGHT to enter temporary injunction stopping proceedings in a State court on appeal before the Circuit Court. In precise language the Circuit Court of Appeals, Eighth Circuit's decision said—"It is well settled where a bill states a case entitling the complainant to equitable relief, if the proof fails to establish the averments of the bill in that respect, *the court is without jurisdiction to proceed further and determine rights in a court at law, etc.*"

It is, of course, clear the Federal court exceeding its *LEGAL RIGHT* (and so admitted by decision by Eighth Circuit Court of Appeals) it was the duty of the Circuit Court to overrule the Federal court. Instead the Circuit Court *affirmed*, by said decision, Federal court's *judgment*.

From the same Circuit Court decision it is also *CLEAR* the Circuit Court *(notwithstanding the controlling Su-*

preme Court LAW of the United States Supreme Court so permitted) saw fit to deny your petitioner to exercise his *LEGAL RIGHT* by trying this defendant in petitioner's own *State court of Missouri* in order to not only obtain *JUSTICE*, but to bring this defendant to *JUSTICE*, the Circuit Court ruling as its reason—"*THE HOPE OF THE PLAINTIFF IN THE LAW CASE MANIFESTLY IS TO FRAME THE PLEADINGS SO AS TO ASSERT A CLAIM OF FRAUD AGAINST THE COMPANY IN A SUBSEQUENT PLEADING*".

It should be clear (and clear to the Circuit Court of Appeals, Eighth Circuit, with what facts did get before it) if your petitioner was trying to "FRAME" a case of "FRAUD" against this defendant, in October, 1935, petitioner would have filed "suit at law" and been satisfied to *FRAME* this defendant on the amount of $25,000.00 defendant policy No. 8 611 895 had been reduced to by defendant, and by FRAUD.

Instead, this defendant, and by FRAUD reduced policy No. 8 611 895 from its original amount ($50,000.00) to amount of $25,000.00. The only means possible for your petitioner to reinstate policy to original amount of $50,000.00 was to file suit in Equity, charging *FRAUD*, in a Missouri State Court October, 1935. This defendant elected to transfer suit from Missouri State Court over into Federal court.

Here, and by decision, the Circuit Court of Appeals, Eighth Circuit denies your petitioner his legal right to prosecute this defendant in his own Missouri State Court by *affirming* Federal court temporary injunction entered stopping proceedings in Missouri State Court.

Your petitioner spent most of his lifetime as a railroad operating officer, and on America's greatest western transcontinental Railroad, supervising some thirty thousand employes with a ring of steel (these employes) successfully

mastered stretching over two of the highest mountain peaks thus putting "human cargoes" both "over the top" or "under the bottom" through tunnels well over a mile long and without *REDUCING SPEED*, and in all these years your petitioner so carried on, not a one single passenger was ever injured or killed, nor delayed. Why? Railroads had discovered in well over one hundred years its LAWS must be obeyed; nor would a railroad officer, much less its employe, change such railroad governing LAWS or deviate therefrom without knowing it was a deliberate attempt to *WRECK* both the railroad, its human cargoes and themselves. The *DISASTER AHEAD* is the Railroad watch word. Railroad Officers and its employes, even fighting with each other at times, did not wreck the American Railroads financially. Law permitted privileged groups to do so.

Here we find a Federal judiciary in Missouri disregarding Missouri State established law on insurance policy disability clause, also openly disregarding a United States Supreme Court 1934 rendered decision legally interpreting the insurance policy clause to be *AMBIGUOUS*, decision stating plainly why it was so *AMBIGUOUS*, said decision based on the State of Virginia where Federal court for the Western District of Virginia declared it to be the LAW policy clause was *NOT AMBIGUOUS*, but the Circuit Court of Appeals for the Fourth Circuit in Virginia overruled the Federal court, the Supreme Court of the United States affirming decision by Virginia Circuit Court.

For the Missouri Federal judiciary to do this the same Missouri Federal judiciary first had to disregard the governing United States Supreme Court LAW, so fully set out above and in petition for writ of certiorari, No. 587—(Page #81, under POINT B) in above entitled cause. Here it had its beginning by your petitioner, filing in Missouri State Court, October, 1935, petition for suit in equity charg-

ing FRAUD, transferred to Federal court for trial, as it was, the whole Federal judiciary discussion ever since has been on the issue of insurance policy disability clause and *DISABILITY* thereunder.

There was one period in the history of the state of Missouri (and undoubtedly also Virginia) where the outraged citizenry might, if not rendered *JUSTICE by LAW*, wrecked their own State, and unquestionably the Missouri State Established Law as disagreed with here by the Federal court decision, November 23rd, 1936, might have eliminated the outraged citizen of that era.

Your petitioner thus calls attention to the effort by defendant insurance company to have Missouri State LAW declare the disability clause in policy No. 8 611 895 in above cause as *NOT AMBIGUOUS*. Contrary to United States Supreme Court LAW, and on a suit in equity charging FRAUD, the *Federal court for the Western District of Missouri*, by decision, ruled disability clause in policy No. 8 611 895 *not to be AMBIGUOUS*. *Missouri State courts* had repeatedly, and by decision, previously ruled disability clause in policy No. 8 611 895 *to be AMBIGUOUS*, also well over a long period of years during every minute, every hour, every day and yes, every year this defendant resorted to every known means under a so called legal imbroglio to influence *Missouri State courts* to grant their pleadings, declare policy clause in policy No. 8 611 895 to be *AMBIGUOUS by LAW*, but this defendant *failed in Missouri as Missouri court decisions quoted in excerpt in foregoing brief in argument on rehearing granted show comprising such a small part of this defendant proof of activity within the State of Missouri, but your petitioner considers more than sufficient here.*

Your petitioner prays the Supreme Court of the United States will over-rule lower courts and find in favor of your petitioner.

WRIT OF CERTIORARI, NUMBER 587 AMENDMENT.

In petition for writ of certiorari, No. 587, page #28-32-33, the defendant *directorate* invited petitioner to take the issue to the courts for settlement.

Petitioner's defendant directorate contact occurred long before the Federal judiciary became involved in this litigation. Petitioner, therefore, here quotes below defendant Director Hale Holden's personally signed letter to petitioner dated *New* York City, *March 31st, 1936.* Quoted in full:

> "I find your letter of March 21st, on my recent return from an extended inspection trip over our lines, which accounts for delay in acknowledgement.
>
> I recall meeting you on the Union Pacific years ago during a trip over your division upon which you accompanied me.
>
> Naturally my relationship to the New York Life does not acquaint me with the technical conditions and details relating to the several forms of policies which it issues and, therefore, I am not able to express my opinion as to the situation affecting yourself which you recite. Knowing the Company as I have it would be perplexing to feel that its representatives would be actuated by any but the correct and, I feel, most liberal construction of the rights of a policy holder, but in order to do what your letter suggests and notwithstanding that you have marked it personal and confidential, I am sending it to the President of the Company, competent that he will put the matter in line for reexamination and such action as in accordance with the standards of the company he may determine. I have no doubt that in due course you will hear from him or from such officer as he may delegate to handle your case.
>
> With best wishes for a lasting improvement in your health, I am".

Mr. Hale Holden became ill and died some time after his above letter to me dated *March 31st, 1936.*

Your petitioner's letter to Mr. Holden (dated March 21st, 1936) advised Cashier Shellhorn of the Kansas City Branch Office had admitted to petitioner before defendant official, Mr. M. M. McKenny that "in June, 1934, he, Shellhorn, did, on petitioner's request on him, send his Mr. Wells to petitioner's office to secure petitioner's four defendant policies to analyze to see if said policies contained a health provision, etc.", and naturally under such a condition if the *disability policy clause* intended the defendant company should meet its obligation to policy holder, suit in equity filed in Missouri State court charging FRAUD, October, 1935, could readily be disposed of by the defendant company arranging a joint meeting in Kansas City, having their officers, Cashier Shellhorn, his assistant, Mr. Wells and Mr. McKenny present, together with your petitioner, and settle the dispute. Petition for writ of certiorari, number 587, pages #28 to page #34 inclusive shows how and where petifioner met these three defendant officials, not until Federal court called trial to order, November 18th, 1936.

A $100,000.00 defendant policy holder, paying this defendant premium of $5,000.00 yearly, aggregating well over fifty thousand dollars since 1924 could not obtain even a joint discussion with three of Kansas City Branch office officials where one (Wells) occasionally called at petitioner's office voluntarily, but testified in Federal court, November, 1936, he, Wells, "had never been in petitioner's office in his life." He, Wells, as petitioner's secretary testified in Federal court called at petitioner's office morning of June 29th, 1934, advised was sent by Cashier Shellhorn to obtain defendant policies to analyze, was given policies by petitioner's secretary—and in petitioner's presence, then he, Wells, left the office and never since returned, Mr. McKenny, however, appeared late in July, 1934, in petitioner's

office, was unknown to petitioner, not invited, and made to identify himself. It is a peculiar coincidence one of petitioner's Federal court subpoenaed witnesses, subpoena served while Shellhorn and Wells testified in Federal court, would walk into petitioner's office within the hour after Wells left on morning of June 29th, 1934, and request petitioner to let him have defendant policies to analyze for a Health provision and advise petitioner if policies contained such a provision, and if so, terms. This same subpoenaed witness in September, 1933, made same request at Kansas City Club upon petitioner (never being in petitioner's office but once, morning of June 29th, 1934), but on September, 1933, petitioner declined request, while on morning of June 29th, 1934, defendant witness had been advised, in response to request made, Wells of defendant Company had just left office with defendant policies to analyze for same thing. The proof is Shellhorn left witness stand in Federal court, then left Federal court room with attorney, called at office of Mr. Mura and requested Mr. Mura not to testify to his knowledge, etc. (See petition for writ of certiorari, No. 587, pages #14-15-33-34.)

Defendant Brief In Opposition to petitioner's petition for writ of certiorari, No. 587, and before this High Court took jurisdiction January 6th, 1941, page SIX states "*some of the matters contained in petition are not only unfounded in the record, but SCANDALOUS*". Director Hale Holden in this defendant Insurance Company was also the head of one of America's great Railroads and met petitioner back in 1914 but once as Mr. Holden states in said letter quoted above. Mr. Holden was held in high esteem by the railroad world, and by the employment, wrote your petitioner later than date above letter quoted and died without knowledge this defendant would not hold joint meeting with petitioner and its three officers. This defendant knows,

wrapped up in petitioner's interchange correspondence with its directorate there does exist something *SCANDALOUS*, also in defendant requesting prospective witnesses how to testify in Federal court following its paid hypothetical medical witnesses. Yet, it aimed to infer to this High Court in its Brief In Opposition to the granting of petitioner's petition for writ of certiorari the "*SCANDALOUS*" incident undoubtedly had to do with petitioner's statements in petition for writ of certiorari, No. 587, pages #47-48-49. On February 10th, 1941, a Missouri Jackson County Court decision proved petitioner's charges appearing on page #49 of writ.

Your petitioner inserted the statements appearing on pages #47-48-49 of writ for the reason if this defendant had a department head in Greater Kansas City a charter subscriber to such an atrocious association as stated whose effort was to "PACK" the jury boxes in all Jackson County Courts. Insurance representatives should not be writing or advising citizens, Banks using monthly bank prospectus, etc., to propagandize the public President Roosevelt was "PACKING" the Supreme Court of the United States as it could not be proved on President Roosevelt, but it could be proved, and against this atrocious association, initiated by Insurance, right here in Jackson County of Missouri. In fact a Missouri Court Jackson County rendered court decision proved it, your petitioner believes, February 10th, 1941. Petitioner made this statement in motion for rehearing filed April 17th, 1941, pages 14-15.

So far as the public comment made by a member of the Federal judiciary as set out on page #47-48 of writ is concerned, your petitioner, while not agreeing with the public assertion, would fight just as hard, taking the same chance and more if need be in world war number one, this Honored member of the Federal Judiciary had a RIGHT to so state publicly. For that matter, your petitioner did not

know, had no means to know, what the political philosophies of the Honored personnel of the United States Supreme Court, if any, might be. This defendant would take no such chances to lose a law suit as its methods are diametrically opposite. With two Honored Judges resident of Missouri mentioned on pages #47-48-49 of writ, one was an Honored member of the Federal judiciary and the other Honored Judge of the Honored Missouri State Court of Jackson County. The Honored Federal Judiciary member received, and here received front page highly favorable newspaper mention and this defendant was foremost in applause. The other Honored Judge of the Missouri State Court generally receives newspaper criticism or articles appear not wholly complimentary. During the hearing before his Missouri State Court preceding decision rendered dated February 10th, 1941, (as mentioned page 14-15 motion for rehearing granted) no mention was made by the press of this City on the sensational evidence put before the court which was TREASON against Democracy and the proof your petitioner is convinced was produced with the rendering of decision by this Missouri Court February 10th, 1941. It requires no courage to take compliments, but it does require "courage" to take criticism from a group control of some *SEVENTY BILLIONS OF DOLLARS* which, however, is owned by insurance policy holders and this defendant has well over fifty thousand dollars of it my legal money. An individual is greatly Honored when becoming a Judge, and always greatly respected, and your petitioner has yet to know or hear of a Judge he does not respect. It is unnecessary to agree or respect all of their rendered court decisions as a Judge, like anyone else can be deceived. This defendant not only deceived your petitioner, but defrauded him. Your petitioner believes it would as readily defraud a Judge, and under the disability clause in the in-

surance policy if it could. Law decisions already rendered prove that also.

The Constitution assures all citizens of a quick "administration of justice". Justice has been denied your petitioner before the courts of State and Nation with the beginning in October, 1935. The Federal judiciary first denying to "administer justice" as intended, prevents a State court to function.

S. R. TOUCEY.

#131 West 61st Terrace,
Kansas City, Mo.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 16

SAMUEL R. TOUCEY,

Petitioner,

vs.

NEW YORK LIFE INSURANCE COMPANY,
A CORPORATION.

PETITIONER'S SUPPLEMENTAL BRIEF IN ARGUMENT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner served on defendant September 24th, 1941, copy of Brief In Argument filed with The Supreme Court of the United States September 24th, 1941; and on September 25th, 1941, defendant served on petitioner copy of Respondent's Supplemental Brief. As set out on page One, last paragraph, petitioner's Brief In Argument your petitioner desires to answer Respondent's Supplemental Brief and prays the Supreme Court will so order.

Quotations from Respondent's Supplemental Brief above mentioned will follow as set out here:

QUOTATION ONE—RESPONDENT'S SUPPLEMENTAL BRIEF, page #1 and #2:

> "In Respondent's Brief it is shown that one of the long established and well recognized grounds of injunctive relief by supplemental bill is to prevent relitigation in another court of issues finally settled by a *decree in equity* (Respondent's Brief, p. 17 et seq.). We also showed that the uniform decisions of this Court for at least the last *fifty years* have held that Section 265 of the Judicial Code (Sec. 379, 28 U. S. C.; R. S., Sec. 720) does not prohibit the issuance of an injunction to prevent a party from re-litigating in state court issues already *adjudicated by a federal equity court* (Respondent' Brief, page 21 et seq.). We pointed out that the present is such a case and, therefore, that if the uniform prior decisions of this Court are still the law the ruling of the Eighth Circuit in this case (102 Fed. 2d 16 and 112 Fed. 2d 927) must be affirmed.
>
> This court has, however, granted certiorari in several cases bearing no similarity on the facts to this case and having the single characteristic that lower federal courts had enjoined the parties for various reasons from proceeding in state courts. At least three of these cases were decided by this Court by four to four votes and have been set down for argument on the opening day of the October term. The remaining case (of which we know) is still pending here on petition for certiorari. It is therefore evident that *this Court* is primarily *interested* in a question of *judicial policy* rather than in the *justice or injustice* of the ruling in any particular case.
>
> "We can only guess the sources of this new interest in a subject on which the law, both federal and state, as well as the law of *England* and its dominions, has long been settled. We believe that *some members of this Court* doubt the wisdom of permitting the federal courts to enjoin parties from pr[illegible]edings in state

courts under any circumstances and therefore wish to review the purpose and scope of Section 265 with the object of changing its present interpretation". End quote.

QUOTATION TWO from Respondent's Supplemental Brief, page #32:

> "*A member of this Court inquired at the original argument why Respondent's remedy was not adequate by pleading the decree of the district court at bar of the State Court suit, and suggested that if the Supreme Court of Missouri refused to honor the plea this Court would exercise its power of review by certiorari.* Since the identity of issues between the pending state court suit and that concluded by the decree below has never been denied, the public interest in terminating this litigation requires that the matter be now concluded by affirming the relief granted the respondent below. Is it just or proper that in order ultimately to prevent this attempt to relitigate the same issues decided by the Federal Court, respondent should be put to its defense in the State Court, subject to a probable appeal, and then have to rely in the final outcome upon the discretionary power of this Court either to grant or refuse a petition for certiorari to obtain a ruling on what is not disputed, namely, that the issues in the two courts are, in fact, identical. We submit that it is not."

It is clear by this defendant's own words in the foregoing quotation respondent's remedy was adequate by pleading the decree of the District Court in bar of the state court suit, and if the Supreme Court of Missouri refused to honor the plea the Supreme Court of the United States would exercise its power by certiorari. Just why this defendant *FEAR* the *Supreme Court of the United States would deny this defendant JUSTICE on certiorari?* On Respondent's supplemental brief, pages #5-6-7-8-9 defendant's apparent strongest precedent case is cited and defendant states (page #7, last paragraph) "*The Similarity in substance between*

that case and this is striking. Here Toucey was defeated in his original action and a decree dismissing his bill on the merits duly entered (R. 43) Thereupon on December 28th, 1937 (R. 22) more than a year after the original equity action, one James Shay, a citizen of the District of Columbia, brought suit against respondent in the Circuit Court of Jackson County, Missouri (R. 53) alledging that he was the assignee of Toucey's cause of action, etc.".

On Petitioner's Brief In Argument, page #5 decision rendered by the Supreme Court of Missouri, Division Number 1, is found quoted in excerpt Supreme Court of Missouri's rendered decision in the *Heald* v. *Aetna Life Insurance Company.* It is an important fact *cited as a precedent case before the Supreme Court of Missouri in said decision was the Rickey* v. *New York Life Insurance Corporation's case so fully quoted by petitioner in excerpt, page #4 on motion for rehearing granted on April 28th, 1941, by Supreme Court of the United States.* Due reference was made by petitioner in Brief In Argument also to the *Rickey* v. *New York Life* Case in prominent points of argument. Here in the *Rickey* v. *New York Life Corporation's* case is to be found this same defendant's policy sold to appellant Rickey back in *1921* with the same identical policy disability clause as is to be found in defendant's policy No. 8 611 895 as sold to your petitioner (and by FRAUD, see petition for writ of certiorari-amendment, page #23-24-25-26-27-28) on *April 29th, 1924.*

It is clear this defendant, and so found by Missouri Courts, in the *Rickey* v. *New York Life Insurance Corporation's* said case with policy sold by defendant in *1921* kept up a continuous *Missouri Court litigation* here until finally on *May 8th, 1934, Missouri Court of Appeals rendered decision.*

In all this period of years before Missouri Courts, starting out with a jury verdict in the *Rickey-New York Life* case, the Missouri Court of Appeals decision May 8th, 1934,

said in part—"*Plaintiff's evidence must be deemed true, defendant's CONTRADICTORY EVIDENCE MUST BE DISREGARDED, and plaintiff must be given benefit of all reasonable and favorable inferences arising from his evidence*". From the start to finish of said *Rickey-New York Life Corporation's* case not a single one of Missouri Courts ever found anything favorable to this defendant, much less mention it in court decisions.

Yet here in the above entitled cause your petitioner with defendant policy No. 8 611 895 with same identical policy disability clause as in 1921 policy by appellant Rickey has been before the Federal judiciary of Missouri since November, 1936, to this date and aside from the order entered on a four to four division of the Supreme Court of the United States entered April 7th, 1941, not one favorable word has been said by the Federal judiciary in favor of your petitioner.

QUOTATION THREE from Respondent's Brief, pages 38-39-40:

CONCLUSION in excerpt, page #38.

"By the time the Court reaches this CONCLUSION it will have read both Respondent's Brief and Respondent's Supplemental Brief and will, therefore, have reviewed many of the principal cases in the United States declaring and applying the principal of law before the Court for review. It will, therefore, be apparent that the Court is not here dealing with a peculiar abuse of federal power contrary to the Statutes, or with an attempt by the national courts to supervise or control the State courts, or with a principal in any sense peculiar or even originated by the national courts. On the contrary it has before it for review the invocation by the District Court of a principle of universal application both here and in *England, etc.*"

Quoting from last paragraph, page #38, Respondent's Supplemental Brief:

> "When, therefore, the question examined is not merely 'what have the federal equity courts done?' but 'what have all Anglo-Saxon Courts done when faced with an attempt to litigate elsewhere issues already adjudged in equity, etc."

Quoting from last paragraph, page #39, Respondent's Supplemental Brief:

> "In closing we respectfully request the Court to bear this further observation in mind. At the time when this statute (Section 265) was first enacted (1793) as is well known, the states were acutely apprehensive that the federal power, including the power of the federal courts, might be exerted in a manner detrimental to and derogatory of the co-existing powers of the states and of the state courts. It is fairly inferable that many states feared that the federal courts might attempt improperly to interfere with the orderly and lawful processes of the state courts and prevent them from exercising their proper function, etc."

Quoting from closing paragraph on Conclusion, Respondent's Supplemental Brief, page #40:

> "We are *concinced* that *this Court will not proceed upon a tangent which would throw it out of harmony with all the other Courts of the Anglo-Saxon world. The decree below should be affirmed.*"

Respondent's Supplemental Brief (top of page #3) makes a slight specific reference to page #35 of Respondent's Brief. Here appears six classifications by this defendant on the direct issue petitioner's suit in equity charging defendant FRAUD as filed in Missouri State Court, transferred by defendant to Federal court (tried November, 1936) that the Federal court did "fairly" adjudicate the issue of equity FRAUD, found by decision adversely

to petitioner on issue of FRAUD; and then, as the same Federal court rendered decision injected the issue of *DISABILITY* (also other issues foreign to equity charge of FRAUD) the Constitution of the United States so intended and any and all laws ever enacted thereunder as well. In the finality of defendant's "Conclusion" on page #40 Respondent's Supplemental Brief states "We are convinced that this Court will not proceed upon a *tangent* which would *throw it out of harmony* with *all the other courts of the Anglo-Saxon world*".

In Respondent's Brief, page #36, second paragraph, is quoted defendant's Sixth classification it makes a stand on in the above entitled cause, but your petitioner believes, in a clearly *CONFUSED* and indefinite status—quote—

> "6. A Federal Court which has issued a final decree in equity adjudging the rights of parties will, upon the filing of a supplemental bill, enjoin the institution or prosecution in a State Court of an action, the object or affect of which is to relitigate and adjudicate issues settled by the decree of the federal court, or which would otherwise tend to nullify that decree or lessen or impair its effect".

With petition for *suit in equity filed in Missouri State Court, October, 1935, charging defendant FRAUD, transferred from Missouri State Court to Federal court and tried by Federal court, decision rendered November 23rd, 1936, when Federal court ruled NO FRAUD had occurred, as charged in equity, Federal court lost jurisdiction to rule on, or try and determine legal issues clearly under the PROVISIONS OF SECTION 379, U. S. C. A., Title 28, Section 265, Judicial Code, much less to later (and by Federal court injunction) stay proceedings in Missouri State court where those proceedings were IN PERSONAM.*

The Federal court, having *determined the equitable issues in the original Equity proceedings adversely to peti-*

tioner, lost jurisdiction (Section 379, U. S. C. A., Title 28, Section 265, Judicial Code) to determine the legal issues of DISABILITY under disability clause in defendant policy No. 8 611 895.

The Federal court in decision rendered November 23rd, 1936, *DID NOT ADJUDICATE petition for suit in equity charging FRAUD to a definite finality on the issue of FRAUD.* See rendered decision with reference to Exhibits #3 and #4 (Page #67 and pages #72 and #73 petition for writ of certiorari, also as mentioned in Transcript of Record, also elaborated upon by petitioner, page #17, Brief in Argument filed September 24th, 1941, with this Court).

Here with classification #6, as quoted above on this page, appearing on Respondent's Brief, pages #35-36, this defendant would lead the Supreme Court of the United States to believe that Section 265 of the Judicial Code was arrived at by the Congress of 1793 by first enactment for this defendant's full benefit, that your petitioner was a FRAUD, even supported by the Federal Judiciary of Missouri, dragged before such Honored Tribunal on a petition for suit in equity charging FRAUD filed in a Missouri State Court (October, 1935) tried by Federal court (November, 1936) issue of FRAUD not even "FAIRLY" adjudicated by Federal court and to a definite finality, the same Federal court stopping proceedings in Missouri State Court by power of Federal court injunction (your petitioner is convinced abuse of Federal court injunctive powers) only for the Circuit Court of Appeals, Eighth Circuit, to render decision on injunction appeal, first clearly stating by said decision (quote)

> "It is well settled 'where a bill states a case entitling the complainant to equitable relief, if the proof fails to establish the averments of the bill in that respect the court is without jurisdiction to proceed further and

> determine rights that are cognizable in a court of law.' It is also the rule 'that where a cause of action cognizable at law is entertained in EQUITY on the ground of some *EQUITABLE RELIEF SOUGHT BY THE BILL*, which it turns out cannot, for defect of proof or other reason, be granted, the Court is *WITHOUT JURISDICTION TO PROCEED FURTHER AND SHOULD DISMISS THE BILL AND REMIT THE CAUSE TO A COURT OF LAW'*. (Pages 13 to 38, Petitioner's Brief in Argument.)

But rendering decision February 24th, 1939, nevertheless affirming Federal court's judgment on the assumption your petitioner, under Section 379, U. S. C. A., Title 28, Section 265, Judicial Code, could and should try this defendant in his own Missouri State Court, but the Circuit Court of Appeals, Eighth Circuit, ruled petitioner could not as, "ingeniously" your petitioner going into a Missouri State court on an issue of disability would "*FRAME*" this defendant on *FRAUD*.

After an array of this defendant's briefs in colossal proportions put before the Federal court and Circuit Court of Appeals, Eighth Circuit, over the long period of years, defendant now culminates its effort on a thesis (Respondent's Brief) and yet a further enlargement thereon (Respondent's Supplemental Brief) and winds it all up with the admonition to the Supreme Court of the United States "not 'o proceed on a *tangent*, agree with the *INJUSTICE* rendered your petitioner BY the Federal judiciary of Missouri as to do so, the Supreme Court of the United States *would be out of harmony with all the other courts of the Anglo-Saxon world*. Not a *one single precedent case* has been *cited* by this defendant before the Federal Judiciary of Missouri, nor before the United States Supreme Court in this long period of Federal judiciary litigation (1935-1936) to justify the Missouri Federal judiciary to stop proceedings in a Missouri State court by Federal

court injunctions, court's final decree under which Marshall was ordered to secure from petitioner, *by force*, and *destroy defendant policy No. 8 611 895, the LAW* so it has been so far claimed by *Federal judiciary decisions*. Even in the well prepared thesis (Respondent's Brief and Supplemental Brief, but not learnedly so in petitioner's conviction) *is cited one single precedent case* to justify the Supreme Court of the United States to *find for this defendant*.

The Honored and learned John Adams wrote a thesis for the guidance of the *Continental Congress* in the drafting of our *American Constitution* (published at Boston and Philadelphia during session Continental Congress) and if the *Constitution* does not mention the John Adams thesis it nevertheless "*lurks by inference*" *in its every written word*. Your petitioner *interprets* the John Adams thesis that in the era preceding the fall of the *ancient Roman Empire*, the judicial branch of this ancient Republic (a democracy) sold it "down the river" into an Empire by court decisions, the Empire but to fall.

Your petitioner prays the Supreme Court of the United States will, if need be, "*get out of harmony with all the Courts of the Anglo-Saxon world*," but *remain in harmony with American Democracy and its Constitution* by over-ruling the lower Federal judiciary courts in Missouri in above enfitled cause and *find in favor of your petitioner*. Scant consideration should be given this defendant's warning to avoid a "*tangent*". History is proof the ancient Roman Empire heeded such a warning and look what happened there!

As your petitioner stated and pointed out on motion for rehearing granted by the Supreme Court of the United States, April 28th, 1941, pages #1-2-3, everything "genuine" has its "counterfeit". This defendant is a "counterfeit". The great danger of this defendant "counterfeit" is that he so skilfully impersonates the "genuine", so ex-

actly forges promises that seem like Christly blessings (page #1, last paragraph) offering them by quite another method and on *lower terms* that good people may be deceived who never for a moment could be deceived if the *mask* were not so lifelike, or if the *mask* were removed. Appellant Rickey, aided by *Missouri Courts*, removed the *mask* from this defendant (*The Rickey* v. *New York Life Corporation's* case, page #4, motion for rehearing) and your petitioner is here engaged, but before the Federal judiciary, to likewise remove the *mask* from this defendant "counterfeit" with policy No. 8 611 895 in above cause, with same identical disability policy clause as in the *Rickey* v. *New York Life Insurance Corporation's* case.

The John Adams thesis (page #7, foregoing brief) was the work of a "genuine".

Respondent's Brief, Respondent's Supplemental Brief as again analyzed here was the work of a "counterfeit" as it is intended as a thesis on Congress of 1793 first enacting Section 265, and with the full intent and purpose this defendant dares to claim, the defendant first admitting (voluntarily, of course) back in 1793 the States of the nation were acutely apprehensive that the Federal judiciary power would "rob" State citizens of *JUSTICE* assured under the Constitution.

QUOTATION ONE, page #1.

The Supreme Court is primarily interested in a question of *Judicial Policy* rather than the *JUSTICE* or *INJUSTICE* of above cause.

QUOTATION TWO, page #32.

Explains why remedy was not adequate by pleading decree of District Court at bar of State court suit.

QUOTATION THREE.

Pages #5-6-7-8-9 claims precedent case similar to above cause.

Page #3 above brief.

Rickey v. *New York Life* case.

QUOTATION THREE, pages 38-39-40.

Denies Federal court injunction was "abuse" stopping proceedings in State court.

What have Federal equity courts done?

What have all Anglo-Saxon courts done?

Congress in 1793 first enacted section 265, States feared Federal court power.

Admonishes United States Supreme Court not to proceed upon a tangent and thus get out of harmony with Anglo-Saxon courts of world.

The "genuine" and greatly Honored John Adams proved his thesis from history, and volunteered this vastly laborious work, and at great personal expense, to first start, then perpetuate American Democracy.

This "counterfeit" defendant, knowing full well the legal pitfalls in policy holder to ambiguous policy clauses; and knowing the colossal "pile of Gold" it reaps without return or rendering any obligation (1905 Missouri Court decision, 1937 decision by Supreme Court of Missouri, petitioner's Brief In Argument, pages #4 and #5) where it obtains support by LAW, left the State of Missouri because he was a "counterfeit" and *FEARED* Missouri Courts, but was and is harbored by the Federal judiciary of Missouri in above entitled cause.

The Supreme Court of the United States rendered decision December 3rd, 1934 "Yield to the Controlling Law and Judges of Virginia on insurance policy disability clause (page #39, Brief in Argument).

The Federal court, on December 3rd, 1936, wrote an opinion on foregoing said Supreme Court of the United States decision, pages #27-28, Brief In Argument. Before Federal court on motion for rehearing was signed affidavit how Federal court subpoenaed witness would testify if rehearing granted with knowledge on FRAUD on petition for suit in equity filed Missouri State court, October, 1935, charging

FRAUD. (Page #23, Brief In Argument; 14-15-16, writ of certiorari-amendment).

When entering Federal court temporary injunction stopping proceedings in Missouri State court Federal court wrote an opinion. (See page #26, Brief In Argument; but for written opinion in full, page #83, writ of certiorari).

Decision rendered by Federal court, November 23rd, 1936 (pages 13 to 31, Brief in argument), and foregoing written opinions by Federal court (pages #27-28 and page #26).

From the foregoing four paragraphs it is clear the Federal court had but one conviction. Disability clause in defendant policy No. 8 611 895 was *NOT AMBIGUOUS* and an urge to disagree with the Controlling Law of Missouri (Missouri State Established Law on disability) and to that end ruled decision rendered by the Supreme Court of the United States, December 3rd, 1934 (page #39, Brief in Argument, Federal court written opinion, pages #27-28) did not apply. But what consideration or mention did Federal court give to affidavit with motion for rehearing (denied) on this defendant's interference with Federal court subpoenaed witness during session of trial with knowledge on FRAUD? Absolutely none, nor is any mention made thereto in Federal court's written opinion (pages #27-28, Brief in Argument, subpoenaed witness interfered with, pages #14-15-16, petition for writ of certiorari-amendment).

Section 379, Title 28, U. S. C. A., Section 265, Judicial Code, was not even considered by Federal court during trial or in the rendering of decision; also when entering injunction stopping proceedings in Missouri State Court. It was surmounted by so called "legal technicalities"—"legal intricacies", but all contrary to evidence before trial, and contrary to Section 265 as well.

It is interesting to note decision rendered by the Supreme Court of the United States (*Mutual Life Insurance Company* v. *Johnson*, page #39 Brief In Argument) makes men-

tion of precedent case cited (Cf. *Klein* v. *New York Life Insurance Company*, 104 U. S. 88, 26 L. Ed. 662). Tersely, in this *Klein* v. *New York Life* case it had its beginning in year 1866. The premiums were punctually paid up to and including year 1871 when Klein, some thirty days before policy lapsed for non-payment of premium became mentally deranged. His wife was ignorant of the policy's existence or knowledge of policy terms. In a suit in equity filed by the wife the Circuit Court of the United States for Northern District of Illinois found for defendant (New York Life). On appeal to the Supreme Court of the United States the court said; quote in excerpt: Equity:

> "But in every such case the test by which to ascertain whether relief can or cannot be had in equity is to consider whether compensation can or cannot be made. In Rose *v.* Rose (Amb. 331, 332) Lord Hardwicke laid down the rule thus: "Equity will relieve against all penalties whatsoever, against non-payment for money at a day certain, against forfeiture of copyhold; but they are all cases where the court can do it with safety to the other party, for if the court cannot put him in as good condition as if the agreement had been performed (issue policy clause notification to defendant and payment premium) the court will not relieve."
>
> It was said in the New York Life *v.* Statham (supra) that "promptness of payment is essential in the business of life insurance. All the calculations of the insurance company are based on the hypothesis of prompt payments. They not only calculate on the receipt of premiums when due, but upon computing interest upon them. It is on this basis that they are enabled to offer insurance at the favorable rates they do. For failure for non-payment is a necessary means of protecting themselves from embarrassment. Delinquency cannot be tolerated or redeemed except at option of company. If the insured can neglect payment at maturity and yet suffer no loss or forfeiture, premiums will not be punctually paid. The Company must have some efficient

means of enforcing punctuality, etc. We are of the opinion that the decree of the Circuit Court is RIGHT and should be: Affirmed:

The Supreme Court of the United States on decision rendered December 3rd, 1934 (page #39 Brief in Argument), did not agree with this year 1866-1871 legal philosophy, and said, quote in excerpt:

> "When the disability of the insured occurred while the policy was in force, he was entitled to have the premiums waived until his death, for the disability continued until his death. He had paid for this right, and to say that he should lose the benefit of his policy because he failed, through mental and physical incapacity, to present proofs, would be harsh and unreasonable, under the circumstances".

The year 1866-1871 *Klein* v. *New York Life* case involved a straight life policy. As American Democracy rolled forward the Courts, and by decision, protected the life policyholder better than the petitioner's wife here, in fact legal complications on straight life policy was eliminated.

This same defendant in above cause influenced your petitioner to cancel off $70,000.00 straight life insurance in two different companies in three policies (page #23 petition for writ of certiorari-amendment) by FRAUD and buy in lieu thereof defendant policy No. 8 611 895 April 29th, 1924, and three additional defendant policies thereafter totaling $100,000.00. This defendant injected its *AMBIGUOUS* disability clause (accident and health) into its straight life policy which existed as a straight life policy back in 1866-1871. Defendant's *joint Life, health and accident policy, forced onto the trade, at least on to your petitioner*, and by *FRAUD*, carries all the *legal complications, legal court imbroglios, legal technicalities, legal intricacies known to the civilized world. Missouri courts, however, surmounted them all and by virtue of the Controlling Law of Missouri,*

known as Missouri's State Established Law on insurance policy disability clause it eliminated state court legal imbroglios and drove this defendant out of the state of Missouri with its form policy No. 8 611 895 in above cause.

In the 1866-1871 Supreme Court of the United States decision (page #10 foregoing brief) this same defendant there, as here in above cause cannot plead to this Court "All the calculations of the Insurance Company are based on the hypothesis of prompt payments. They not only calculate upon the receipt of the premiums when due, but upon compounding interest upon them" (Certified Record, petition for writ of certiorari, pages #68-69-70-71, Federal court rendered decision November 23rd, 1936, Exhibits #3 and #4, this defendant letters to petitioner, defendant making his own calculations and way in advance).

Yet this defendant, and by its representative, has advised its policyholder since an ignorant citizenry of State and nation adopted political philosophies beginning in 1932, due to its colossal reserves it met its policy 6% obligations on policyholder's money under terms of contract, obtaining only about 1% in the business world, but the people would get wise, repudiate an administration responsible and in meantime this defendant's policyholders had nothing to fear, etc."

It proves to be a somewhat different claim made to this Court, and by this defendant, back in 1866-1871 as against the period in America starting with year 1932.

This defendant (Page #36 Respondent's Brief, pages #5-6-7-8-9 Respondent's Supplemental Brief, quoted last paragraph page #2 foregoing) claims your petitioner, more than a year after the original *EQUITY ACTION* rightfully adjudicated by Federal Court on issue of *FRAUD*, enters Missouri State Court December 28th, 1937, (R. 22) to *DEFRAUD this defendant by LAW*, hence above entitled cause with defendant policy No. 8 611 895, but fails to men-

tion record of this defendant policy with its disability clause in defendant's effort over long period of years (*Rickey* v. *New York Life*, page #4 motion for rehearing granted April 28th, 1941) in Missouri, nor that Missouri Courts denied their pleas and said by Missouri Court decision (page #4 motion for rehearing granted April 28th, 1941) "*DEFENDANT'S CONTRADICTORY EVIDENCE MUST BE DISREGARDED, etc.*".

Nor has this defendant answered your petitioner to this Honorable High Court (page #49 petition for writ of certiorari-amendment, also first paragraph page #33 where Directorate requested petitioner to enter Missouri Court December 28th, 1937, (R. 22) page #16 motion for rehearing granted April 28th, 1941) nor made the slightest allusion two of its Directors, lifetime professional politicians, supported a United States Senate leadership group (pages #11-12-13 Brief In Argument) where an effort with national proportions aimed to tear down American Democracy from WITHIN. If American citizens of State and nation hold *disrespect* for the *LAW* American Democracy is "on the way out" as it did go out in ancient Rome. Put here, the same Senate leadership group, striving, ignorantly or otherwise, to destroy American Democracy from *WITHIN*, seek also since 1939 to destroy American Democracy from *WITHOUT*.

Your petitioner has observed Federal judiciary Rules and Regulations to put facts before this High Court in petition for writ of certiorari and amendment thereto, also in all subsequent Briefs, motions, etc.

The greatest proof this defendant's thesis on Section 265 is the work of a "counterfeit" here follows, viz:

In February, 1937, the President of the United States publicly charged to the nation and to the Congress, quote—

> "Delay in the administration of justice is the outstanding defect in our federal judiciary system. * * *

> It has exasperated the bench, the bar and the public. * * * The evil is a growing one * * * The business of the Courts is continually increasing * * * The time has come when further legislation is essential".

This defendant and its directorate, at least those among it lifetime professional politicians, (and the fact one was a lifetime Republican and the other a lifetime Democrat with diametrically opposite lifetime political philosophies) campaigned the nation to defeat the President of the United States proposed Federal judiciary bill; and with the aid of a group leadership in the United States Senate (comprised of Republicans and some publicly professed Democrats) did defeat the President of the United States Federal judiciary bill in the Senate.

Here in the above entitled cause with defendant policy Number 8 611 895 and its disability clause (a full and true record of its *AMBIGUITY* to be found within Missouri Court decisions) is proof what it is and has been all about.

For the Supreme Court of the United States to declare, and by the rendered High Court decision, the Federal judiciary of Missouri observed fully and were guided by Section 265, Judicial Code, first enacted by the Congress in 1793, in all opinions, decisions, court's final decree (destroy policy No. 8 611 895, the LAW) and the thesis prepared by this defendant in Respondent's Brief and Respondent's Supplemental Brief in support thereof is the work of a *MASTER* and a *MASTERPIECE*.

Your petitioner claims it to be the work of a "*counterfeit*" (pages #1-2-3 motion for rehearing granted by the Supreme Court of the United States April 28th, 1941) and also claims what the President of the United States publicly charged to the Nation and to the Congress of the Nation (February, 1937) to be correct, and that your petitioner has proven to this High Court it is here its plain

duty to surround the Federal courts of the Nation with such a highly Judicial rendered decision by this High Court for guidance no Federal court will again become misguided on the correct interpretation of Section 265 nor the intent of the Constitution of the United States. The above entitled cause is *PROOF* AND YOUR PETITIONER PRAYS FOR SUCH RESULT.

S. R. Toucey.

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